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Ref. Doc. # 9904300003

Document Type FOLDER

Name FOIA request of Charles D. Case/Hun

Subject Text
Documents from 1997 to the present submitted by John Palmisano related to ENRON and global Climate change and emissions trading.

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Final Action
GIF Granted in Full

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Date Received 4/30/99

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FOIA Contact MORRISA

Morris, Alexander 202 586-3159

Program Contact

Department of Energy
Washington, DC 20585

August 11, 1999

Charles D. Case
Hunton & Williams
1900 K. Street, NW
P.O. Box 19230
Washington, DC 20036

Attn: Britt A. Waldon
Re: 9904300003

Dear Mr. Case:

This is the final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for all documents from 1997 to the present submitted by John Palmisano related to ENRON and global climate change and emissions trading.

In correspondence dated May 5, 1999, you were informed that your request had been assigned to the Office of Energy Efficiency (EE) to conduct a search of its files and to provide you a response. The EE provided a final response to you from their office on June 1, 1999.

In correspondence dated May 20, 1999, you were informed that your request also had been assigned to the Office of Policy, Office of the Secretary and the Office of the Deputy Secretary to conduct a search of their files for documents responsive to your request.

The Office of Policy has completed its search and provided the enclosed document as responsive to your request. The document is provided to you in its entirety.

The Offices of the Secretary and Deputy Secretary have completed their searches and found no documents responsive to the request. Therefore, pursuant to Title 10, Code of Federal Regulations (CFR), Section 1004.4(d), I am unable to provide any documents responsive to your request from these offices.

Pursuant to 10 CFR 1004.7(b)(2), I am the individual responsible for the determination of the Office of the Secretary and Office of the Deputy Secretary.

You may challenge the adequacy of this search for responsive documents by submitting a written appeal to the Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0107, within 30 calendar days of receipt of this determination. The written appeal, including the envelope, must clearly indicate that a Freedom of Information Act appeal is being made. The appeal must contain all the elements required by 10 CFR 1004.8 to the extent applicable. Judicial review will thereafter be available to you (1) in the District of Columbia; (2) in this district where you reside; (3) where you have your principal place of business; or (4) where the DOE records are located.

If you have any questions concerning this correspondence, please contact Chris Morris of my staff on (202) 586-3159. I appreciate the opportunity to assist you with this matter and thank you for your interest in the Department.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

Enclosure

-- DRAFT 10-13-98 comments appreciated --

Buyer Liability for Greenhouse Gas Trading is Good for the Environment and Good for Emissions Trading

by

John Palmisano
Enron International, Washington, DC
fax in USA: 202-835-0971 e:mail jpalmis@enron.com

Introduction

The Kyoto Protocol on limiting greenhouse gases allows for the transfer of "assigned amounts" of greenhouse gases (GHG) among Annex B Parties. This transfer is called "emissions trading." This paper demonstrates that countries and companies that buy "assigned amounts" of GHGs should be responsible for the validity and environmental integrity of these assigned amounts. If buyers do not want environmental and commercial liability, then "assigned amount" buyers should either acquire insurance or pass the liability back to sellers through normal commercial terms and conditions. The result of buyer liability is that countries that attempt to sell non-surplus "assigned amounts" will have their products avoided in the marketplace until the country demonstrates that it will meet its GHG control commitments. Such a system is preferred over seller liability since buyer liability produces good environmental results, promotes a market for either high integrity "assigned amounts" or insurance products, and is enforceable by domestic regulators.

Background

Emissions trades will work in the following manner. Under Article 17, "assigned amounts" are internationally agreed upon levels of GHG emissions for a five year budget period beginning in 2008 and ending in 2012. The Annex B countries are the developed countries and the transitional economies, including the United States, Russia and Ukraine, Europe, Australia, Canada, New Zealand, and Japan. Under the rules of the Protocol, these countries will limit their emissions of greenhouse gases by a certain percentage of 1990 levels of GHG emissions during the 2008-2012 interval. If Annex B countries emit less than their assigned amount during this time, they will be able to sell some or all of these surplus "assigned amounts" to other countries or "bank" their surplus GHG emissions for use during the next time period. Buyer companies or countries will be able to use these surplus assigned amounts to meet their own GHG caps. Analysts predict that the trading of assigned amounts (usually called "emissions trading" or ET) will reduce the cost of compliance with GHG reduction targets by billions of dollars.

While Annex B countries include the developed and transitional economies, "non-Annex B" refers to "developing countries." Still GHG trades can be conducted between Annex B and non-Annex B countries. While emissions trading among Annex B countries is described in

Article 17, trading between Annex B and non-Annex B is described under Article 12 of the Kyoto Protocol -- the Clean Development Mechanism (CDM). The CDM allows developing countries to trade GHG reductions that result from specific projects. Trades of so-called "certified emissions reductions" (CERs) will be based on the difference between a project's GHG emissions and a baseline determined to be those emissions that would have happened anyway. CERs that result from CDM actions can be traded only after they are created and certified.

Besides trading CERs and emissions trading of assigned amounts, there is a third trading initiative called joint implementation, or JI. JI is described under Article 6 of the Kyoto Protocol. JI is similar to the CDM in that the focus of the trade is a surplus emission reduction that flows from a specific project; however, JI transactions take place among Annex B countries. Any emissions credit that flows from a JI or CDM project is created after the fact -- it is certified after the emission reduction has been qualified and quantified -- then JI and CDM reductions can be traded or banked for future use. Since JI and CDM reductions are demonstrated first, before they are traded, there is no liability issue with respect to the "surplusness" of these reductions. This is in contrast to the real liability issues involved with emissions trading.

What are the liability issues?

Many people envision a system where potentially surplus assigned amounts are traded first and demonstrated to be surplus later. The question, therefore, arises as to who is liable if traded "assigned amounts" are not demonstrated to be surplus. Against whom can the domestic regulator enforce compliance? Against whom can citizens act? What kind of liability rules promote the greatest commercial integrity? What kind of liability rules yield the most environmental integrity? Obviously, liability rules can affect how people view a system that is built on a principle of sell-now and verify-later.

Specifically, the concerns include:

- VERIFICATION
  Emissions from Annex B Parties will not be subject to verification tests until the end of the initial period, 2012, and may not be known until 2014. To preserve the integrity of the global greenhouse gas trading system, domestic regulators must verify that all trades applied against domestic control obligations are real. In other words, emissions trades of "assigned amounts" must only consist of guaranteed surplus GHG emissions.

- ENFORCEMENT
  The buyer-company will be in one country, while the seller is either a foreign government or a foreign company. The enforcer of compliance will be a domestic regulator or an international organization. The domestic regulator has jurisdiction only with respect to the domestic (buyer) company. The seller of the alleged "surplus" assigned amounts is beyond the legal reach of the domestic regulator. An international organization will never have the power to legally sanction

AB-1

fraudulent sellers of non-surplus assigned amounts. Buyer liability assures regulators that they can enforce non-compliance penalties against domestic firms.

- INTEGRITY OF THE SYSTEM
  There is a danger that cheap low-integrity trades may crowd-out high-integrity trades. Once low-integrity "surplus" reductions get traded they can never be taken out of the system. Such a result undermines the value of real reductions created by companies in their domestic facilities, undermines the market value of JI and CDM reductions, and undermines the environmental integrity of all three of the flexibility mechanisms.

Since there is a potential for noncompliance by both buyer and seller countries, there is a need to specify which party is liable if a country determines that sold (so-called) surplus assigned amounts are not, in fact, surplus. Otherwise two countries may fail to meet GHG control commitments – the seller who failed to meet commitments and the buyer who applies paper credits toward it commitment instead of real surplus assigned amounts. GHG trading rules must clarify which party in an emissions trade is liable for a failure to perform -- the buyer, the seller or both.

Is the buyer or seller be responsible for insuring the surplus nature of traded GHGs?
Responsibility for validating the surplus nature of purchased assigned amount could rest with sellers of assigned amounts, with buyers, or with some combination of the two. If sellers are liable, they will be held responsible for making sure they have sufficient parts of assigned amount to cover their emissions after any sales are conducted, and would be subject to domestic and international penalties for selling assigned amounts that are not surplus. On the other hand, since buyers would be using any purchased assigned amounts to meet a domestic GHG emission limit, domestic regulators can only sanction GHG buyers who attempt to apply non-surplus reductions against a domestic emission control obligation. Responsibility could also be imposed upon both the buyer and seller, as is done under certain U. S. environmental regulations. The Conference of the Parties to the Framework Convention on Climate Change will consider this issue when they meet in Buenos Aires in November. While this is a complex issue, Tables 1 and 2 provide some insight into how this problem might be approached.

Making sellers liable is simple in concept, but difficult in practice. An allocation, once sold, would retain its value as a portion of an assigned amount in the market no matter what the seller finally emitted. At the end of the trading period, compliance would be confirmed and sanctions invoked on those countries and companies that claimed to sell surplus GHG emission reductions but failed to establish "surplusness." However, having domestic or international regulators impose legal sanctions on foreign companies or countries is easier said that done.

AR-2

Table 1
Upon whom do we impose liability and why?

On the buyer
When the buyer can best influence the integrity of the outcome or when the regulator or public can only recover from the buyer. Consider the case of the person who has acquired, or bought, counterfeit money. The buyer must beware and the buyer assumes complete liability since any future "buyer" of the money cannot get relief from the original seller.

On the seller
When the seller's behavior best influences the integrity of the outcome or when the regulator can only recover from the seller; examples relate to property law where the seller has more knowledge about the property than does the buyer; thus, full disclosure is required and indemnification provisions are commonplace.

On both buyers and sellers
When there is an over-riding public policy reason for insuring fulfillment of a regulatory obligation (i.e., Superfund).

While, in theory, seller liability provides punishment once noncompliance is discovered in 2013, it does nothing to promote compliance along the way. In addition, seller liability works only when sellers are accountable and punishable. But this is a highly unlikely outcome under any anticipated climate change negotiation.

Table 2
Whose behavior can environmental regulators affect and what does that mean?
On whom does liability for the integrity of the surplus reduction rest and why?

Who is the enforcer of liability ↓	**The "creator"** **(Seller company)**	**The "user"** **(Buyer company)**
regulator in "seller" country	Regulator can affect seller's behavior	Regulators cannot affect behavior
regulator in "buyer" country	Cannot affect behavior	Regulator **can** affect buyer's behavior

1B-3

It is unlikely that countries can be punished if they sell GHG emission reductions that are implied to be surplus and are subsequently found to be defective. It is virtually impossible for a domestic regulator say, in Canada, to enforce sanctions against a GHG seller in Russia. Therefore seller liability for yet-to-be-proven surplus assigned amounts is impractical.

The need for assuring environmental and commercial integrity of traded "surplus" reductions will dictate rules that make Parties meet their emissions reduction obligations and attain the Protocol's environmental goals. For the reasons discussed below, the best commercial and environmental outcomes are achieved when it is the responsibility of buyers to insure the surplus nature of the GHG emissions they are purchasing.

Why doesn't seller liability create the right economic and environmental incentives?
The scale of emissions trading will be global and domestic sanctions may not provide a sufficient deterrent for non-compliant behavior. In addition, domestic legal sanctions may not be sufficiently enforced in all countries. The United States has proposed two international methods of dealing with Parties that sell non-surplus parts of assigned amount: sellers could be excluded from future emissions trades or they would have to deduct the excess, with a penalty, from the next period's assignment. The second option sounds very much like emissions borrowing, a concept already rejected by the Conference of Parties.

While proposed "sticks" create penalties for non-compliance, they may not be sufficient deterrents for Parties with a short-term outlook, and they do not provide "carrots" for compliant behavior. In the two proposed methods for correcting illegal trades, damage to the environment is irreparable because buyers have used non-surplus emissions to cover their own. Damage is also imposed on the system of emissions trading by getting "counterfeit" trades into the system. And even if the concept of emissions borrowing is accepted, there is no guarantee that borrowing behavior exhibited during the first commitment period will not be repeated in future budget periods, thus emission control repayment is never achieved.

In addition, international trade sanctions are notoriously difficult to impose, even for issues (like weapons proliferation) that enjoy broad popular consensus. Because trades of GHGs will cross international boundaries, legal and financial penalties for sale of emissions that are not surplus will be problematic. With weak enforcement or insufficient penalties, sellers will have a financial incentive to sell an assigned amount that exceeds the penalties of non-compliance. These sales could undercut prices from countries and firms that legitimately sell surplus assigned amounts. A system that builds incentives for compliance into the trading program is preferable.

What is buyer liability and why is it better?
With buyer liability, the buyer would be responsible for insuring that the purchased "assigned amount" is truly surplus. If the seller is found to have sold non-surplus assigned amounts, these assigned amounts will be invalidated and buyers will not be able use them to meet their emissions control obligations.

1B-4

If buyers are liable for a seller's failure to perform, the market for "assigned amounts" will be differentiated by seller. Countries that act in ways to insure the surplus nature of the sold assigned amounts will have more valuable assigned amounts since the likelihood of default will be less than for low integrity assigned amounts. Since buyers will be responsible for insuring the surplus nature of the assigned amount they purchase, they will be vigilant about who they buy from, and buyers will pay more for credits that have a high probability of being surplus after the first budget period. Buyers will be willing to pay more for high-integrity assigned amount and will pay less for low-integrity assigned amounts. With buyer liability, the international GHG market will give value to the assigned amount that is likely to be surplus, and devalue an assigned amount that is of low integrity. It will therefore provide incentives to the seller to maintain the integrity of the parts of assigned amount they sell and to stay within their cap.

The initial buyers of GHG emissions could also have the option of purchasing insurance from the private sector or governments that allows for the replacement of a non-surplus assigned amount. The insurance premium charged would be based on the risk associated with the seller. If the seller runs a high risk of not having enough surplus emissions to cover its sales, the premium will be high. Conversely, if the seller is likely to meet its emissions commitments, the premium will be low.

Because the price of insurance will be incorporated into the market price for GHG assigned amounts, sellers will have an incentive to keep their default risk low and sell only those allowances they know to be surplus. To minimize this risk, sellers might also have an incentive to control emissions below the required levels, thus maintaining a reserve to protect against default. This is an environmental benefit of buyer liability that seller liability does not provide.

There are a variety of remedies if, at the end of the budget period, a seller is found not to have generated surplus assigned amounts equal to the amount that they have sold. For example:

1. sales could be disallowed in reverse order (last-in, first-out) until the seller has enough assigned amount to cover its needs, or
2. all traded assigned amounts could be pro-rated downward to adjust for the amount oversold, or
3. all traded assigned amounts could be viewed as defective since it is impossible to determine which trades involved non-surplus "credits."

Each remedy will have a different effect on the market for potentially non-surplus assigned amounts.

Disallowing transactions in reverse order might create an incentive to begin trading early in the commitment period and to register these trades as soon as possible, but this option puts little pressure on sellers of assigned amounts to maintain quality reductions. Pro-rating all reductions downward provides some security for GHG allocation buyers and reduces the insurance premium. However, pro-rating may not provide a strong incentive for assigned-

1B-5

amount-selling countries to be rigorous in maintaining GHG surpluses. Option 3 puts the most market pressure on sellers of GHG because buyers will demand higher guarantees of surplusness. Option 3 provide the most environmental integrity and promotes the development of the most rigorous GHG monitoring and reporting systems. Impounding all traded assigned amounts may be too strict of a system for some parties, but this system guarantees the integrity of the GHG trading system while creating a complementary market for ancillary insurance products.

All three systems could encourage the development of insurance services, information services to provide information on buyer risks, and better GHG monitoring systems in seller-countries. Any insurance product would likely follow the assigned amount even if the assigned amount is resold. The insurance information would be only two or three data items in an emissions trading data-base, hardly a big task. Because the insurance would be country- and date-specific, the insurance premium and pay-out would be very specific, much the same as is political risk insurance. If purchases are disallowed, insurers will provide valid assigned amounts (or cash equivalents) as compensation.

Buyer liability promotes market-based objectives by encouraging market-based risk-management solutions. Buyer liability also promotes environmental objectives by creating incentives for countries to create high-integrity emission reductions via the avoidance of GHG emissions shortfalls by over-controlling.

Is buyer liability tenable?

Organizations like the United Nations could provide information that tracks the probability of sellers being in compliance. If the United Nations does not do this, other organizations will fill the niche. Annual reporting of GHG reductions is likely to be written into the rules for either liability scenario, and potential assigned amount deficits will become obvious over time since emission trades will be tracked by country, sector, company, and facility. With buyer liability, seller countries with potential deficits will find fewer buyers for their assigned amounts, and insurance and information products will be developed to help companies and countries manage their risk. The GHG emissions market, like the multi-trillion dollar bond market, will discriminate by quality.

In addition. because Annex B companies will be responsible for validating the surplus emissions they purchase, and would likely be subject to domestic sanctions if they do not, citizens, regulators and environmental organizations will gain faith in the international GHG trading program.

Conclusion

Buyer liability:

- promotes trading of high integrity assigned amounts;
- makes assigned amount trading comparable with JI and CDM trading;
- promotes a market for insurance products, promotes good measurement and GHG monitoring by seller countries; and
- is easier to enforce by domestic regulators.

IB-6

The environmental and commercial stakes are high. A well designed international trading program will help participants achieve the environmental objective of GHG emissions reductions while cutting the cost of compliance by billions of dollars over the coming decades. A successful trading program will broaden and sustain international participation. A poorly designed program will encourage non-participation and non-compliance, raise costs, and exacerbate environmental problems. Once a trading program is designed, it will be difficult to change. Buyer liability is one critical piece of this complicated puzzle; it's important to put it in place the first time around.

IB-7

file

* Chris Morris
- FOIA office
MA-53

- Audrey Newman
EE-10

Department of Energy
Washington, DC 20585

June 1, 1999

Charles D. Case, Esq.
Hunton & Williams
1900 K Street, NW
P.O. Box 19230
Washington, DC 20036

FOIA #9904300003

Dear Mr. Case:

The copies and electronic correspondence responding to your April 26, 1999, request under the Freedom of Information Act for documents relating to ENRON, global climate change, and emissions trading, submitted to my office from 1997 to the present by John Palmisano, are enclosed.

Please note that this response is solely for the Office of Power Technologies.

Sincerely,

Daniel M. Adamson
Deputy Assistant Secretary
Office of Power Technologies
Energy Efficiency and Renewable Energy

Enclosures

1 C,

DOE F 1325.8
(8-89)

United States Government **Department of Energy**

memorandum

DATE: May 12, 1999

REPLY TO ATTN OF: Chris Bordeaux, USIJI, 202-586-3070

SUBJECT: ENRON John Palmisano papers

TO: Audrey Newman

Please find the attached two documents provided to me by Mr. John Palmisano.

Attachments (2)

1D

Dear Colleague:

FROM: **John Palmisano, Enron International**

DATE: **January 8, 1999**

SUBJECT: **Two Papers Regarding Early Credits for Greenhouse Gases**

Attached is a short paper discussing the environmental and economic benefits that might derive from early crediting – benefits that I cannot detect in some proposals. I have asked many people if there is any evidence that early crediting provides net economic benefit or new environmental benefits and I have not been able to find any substantiation of these benefits; therefore, I thought I would look into the matter.

While I support early crediting, like many broad-brush concepts, early crediting means little if there are no details. It is difficult to actively support a policy that must be fine-tuned to be analyzed. It is at that point, when there is legislative/regulatory flesh on high-level-rhetoric bones, that we can assess the economic, environmental, political, and equity benefits that determine if early-crediting is merely an instrument for wealth transfer, promoting innovation, "jump-starting" emissions trading, or will be an illusion.

Also, you might want to read a recent US Government Accounting Office paper on early crediting. The GAO publication (GAO/RCED-99-23) speaks to many of the concerns that I have shared with colleagues and reinforces my conviction that advocates for early crediting (among whom I am one) have an obligation to demonstrate the benefits, costs, and implementation path that makes early credit viable. You can find the GAO paper on the Web on the GAO web-site:

www.gao.gov/new.items/rc99023.pdf

I will be writing other papers on this subject, especially the economics of early crediting, to better understanding as to how early crediting can be shaped to achieve well-defined and measurable objectives.

If anyone has done a study or knows of a study that documents the environmental and economic benefits that derive form early crediting, could you please pass it my way. Any comments you have on the paper would be appreciated.

Attachment: Word-file
Excel file (containing an example)

01/26/99

What Are The Economic and Environmental Benefits From Early "Crediting"?

By
John Palmisano
Enron International
Washington, DC

Creating incentives for reducing greenhouse gases can produce many economic and environmental benefits and, as a general concept, should be supported. One kind of incentive for early action is early crediting. It has been asserted that early crediting can produce economic and environmental benefits. This may be true, but it has not been demonstrated. How does early crediting work and what are the benefits?

What Does Early Crediting Mean?

"Crediting" can have at least two meanings: (1) granting recognition, and (2) granting an asset which potentially can offset a liability.

The use of "crediting" to imply recognition is a limited, and easily agreed upon action. "Good deeds should receive credit" is another way of saying "good deeds should be recognized." The question is "what constitutes proper recognition?" Is proper recognition an accolade, public praise, a tax credit that offsets a tax liability, preferential treatment for air pollution permitting, preferential treatment for financial grants, or money?

Crediting that implies giving an emission credit that can be used to offset a future emissions control obligation is a much more ambitious and complicated action.

The limited form of crediting (recognition) is easily agreed to; the more broad form of entitlement is much more difficult to craft.

What Actions Produce Environmental and Economic Benefits?

Extra environmental benefits occur when companies reduce emissions before regulations take place. These environmental benefits occur because companies do not install pollution control technologies coincidentally with the exact start date of regulatory programs. For example, there is a small incremental environmental benefit when a company installs an air toxic control device a week, a month, or a year before the effective date of an air toxics regulatory control program. The only cost is the time value of the money that could have been put to a more productive economic use. Therefore, for normal regulatory programs, early action results in a small economic cost and a small environmental benefit.

While the costs and benefits derived from some early actions might be small, if poorly designed, a regulatory program can penalize early action. For example, it is possible to imagine a company that has been a good environmental actor but because of its current low emissions it gets a lower emissions baseline than companies that have done less. The company's good environmental citizenry now exposes it to more stringent reduction targets, which translates into higher costs.

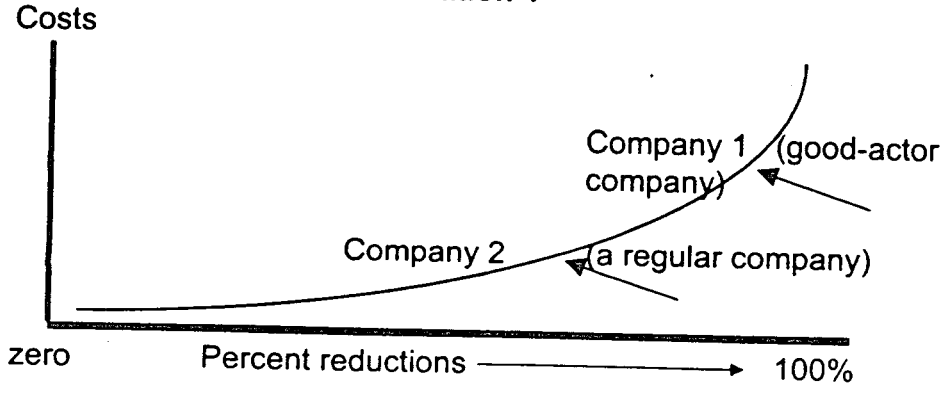
Table 1 and Illustration 1 provide an example of this problem. In general, the more pollution is reduced the more it costs. The marginal cost to control each additional unit of pollution increases disproportionately as the percent of emissions controlled increases. In Table 1, Company 1 has already reduced much of its emissions. This company is referred to as a good-actor company and it faces very high control costs, while its competitor, relatively less clean Company 2, faces lower control costs.

Table 1
Good Deeds Can Sometimes Be Punished

	Current emissions	Future target @ 50% reduction based on current emissions	Incremental cost to reduce more emissions
Company 1 (a good-actor company)	10 pounds per million cubic feet of product input	5 pound per million cubic feet of product input	Very high
Company 2 (a regular company)	30 pounds per million cubic feet of product input	15 pounds per million cubic feet of product input	Modest

Illustration 1 below reveals the relationship between the percent of emissions removed and increased emissions control costs. If, as is described in Table 1, the good-actor company is required to reduce the same percent as is the regular company, then the good-actor will face much higher control costs. If they are competitors, the good-actor may be at a distinct disadvantage.

Illustration 1



A potential remedy to the same-percent-reduction problem can be constructed by requiring all companies to use a previous-year emissions baseline and then creating an emissions cap. The emissions baseline would be chosen from a time before Company 1 installed emissions control technology. We could take the throughput multiplied by the emissions rate and create a historic baseline that will be the companies' emissions cap. The new regulatory program might lower overall allowable "capped" emissions. Depending on the allocation methods, the good environmental actor, Company 1, may already be in compliance with its new emissions cap. The other company, however, may be required to create extra emissions reductions. Thus, the good actor receives credit for previous actions.

How might rewarding early action work in the context of greenhouse gas controls? Assume companies want to start controlling greenhouse gas emissions to prepare for a future (but unspecified) regulatory regime. Bipartisan political and environmental interests could send a powerful signal that qualified, quantified, real, and verified emission reductions from a historic baseline will be recognized and will put companies on a downward emissions path toward future control requirements. Such a signal articulates a fundamental principle: to the extent possible, doing good deeds should not disadvantage companies. This signal, however, does not also require the granting of offset-capable emission reduction credits.

Acting early will put companies on a less steep emissions control path in the future. This second type of early action has been shown to be useful in the case of SOx allowance trading under the United States' Clean Air Act. How might a domestic early action program work for the prudent control of greenhouse gas emissions?

A Questionable Type of Early Action

There is another type of early action. This system could potentially involve double crediting as an extra incentive for early action.

Imagine an early action program that produces a lowered emissions baseline, as described above, and also yields emission reduction credits that can be used to offset future emissions. Does such a program make environmental sense?

The answer is embedded in how emissions trading works under US EPA guidelines for criteria (or local) air pollutants. Under the US EPA's Emissions Trading Policy Statement, emission reductions can only be used to offset an emission control liability if the reductions are surplus and do not involve double counting. Reductions must be contemporaneous with emission increases, not time-lagged.

Consider several people smoking cigarettes in a closed room and a regulatory program to limit cigarette smoking is created. Under some emissions trading rules, there could

be a cap on the number of cigarettes smoked equal to a certain number per hour. Say person A was limited to two cigarettes per hour and person B was limited to one per hour. Person B is free to buy a cigarette smoking right from person A. Transactions could take place so long as total cigarettes consumed were equal to or less than three cigarettes per hour. This is how the emissions allowance trading system works.

Now consider the situation when person B wants to smoke two cigarettes in an hour. This time, however, he does not buy an allocation from person A but instead smokes a second cigarette stating that he is using an offsetting "credit." This "credit" is being claimed because B did not smoke in the room **before** the regulatory program took effect. Person B wants an early "credit" for a previous good deed. Should previous acts, albeit good deeds, be rewarded by creating illusionary "credits" that can offset future pollution? Would it make good regulatory sense to reward reduced, pre-regulatory, smoking with "credits"? Would this approach make environmental sense for controls on air toxics, such as mercury emissions, from power plants where no regulations now exist but future controls might be imposed? What are the implications of such a practice?

Note that the illusionary credit problem exists whether or not we are discussing an allowance-based system or an emission credit-based system. Under a credit-based system, reductions can only be used if they are real, quantifiable, verifiable, surplus, and contemporaneous. The illusionary credit fails this test. It is instructive to read from draft EPA guidance on early reductions for non-attainment problems (Office of Air and Radiation, Office of Policy Analysis and Review, draft of Early Reductions Paper, March 30, 1998):

> ...programs to foster early reductions, such as a trading program with banking, may ultimately lead to increases in emissions beyond the attainment date and therefore delay attainment. (page 1, para. 2)
>
> Early reductions are measured against a baseline of mandated reductions. At any given point in time, the baseline represents the expected levels of reductions as established by the combination of requirements for programs...and reasonable further progress and attainment scheduled to be in effect. The rules establishing the baseline are obviously important, and EPA should provide formal guidance to ensure uniformity of treatment of early reductions across States. (page 1, para.3)
>
> Unfortunately, banking can create planning concerns and might also result in future air quality problems if sources use many banked emissions... (page 2, para. 4)

Note that in the above example, Person B claimed a credit based on his own "baseline" and believes he has earned "credits." What are the consequences of this version of early crediting – every early "credit" either forces the smoke-filled-room to be out of compliance with the regulatory program or requires some other person to control more than their fair share. There may be over-riding public policy objectives that warrant rewarding some parties at the expense of others, but policy objectives should be well specified in advance and understood by all.

Table 2 (page 8) is an arithmetic illustration of what can be referred to as illusionary crediting in the context of greenhouse gas controls. In Table 2 there are two examples of companies reducing emissions. In Example 1, the two companies (1 and 2) merely reduce and meet their budget targets (as summed-up over the five year period); no crediting for early reductions is granted other than recognizing the emission reductions and lowering the amount of subsequent reductions required to meet budget requirements. In Example 2, companies 1 and 2 are given early "credits" for reductions they achieved to get down to reasonable emission levels before the budget period starts. By giving early credits to Company 1 and 2, other companies will be required to control more. Since companies 1 and 2 use or trade their emission credits to offset a future emission liability, there is no, or very little, incremental environmental benefit. Since other companies must do more to control emissions, there is no net economic benefit.

Notice that in Example 2 in Table 2, early credits accumulate every year before the first budget period begins. Therefore, some credit-giving rules can transfer substantial wealth to so-called early actors while imposing substantial penalties upon those companies that are neither good nor bad but merely choose, for whatever reasons, to wait to control emissions until a regulatory control program goes into effect.

Thus, double-counting for credits – a lower recognized baseline and inter-temporal credit-giving – may or may not produce the desired environmental results while surely distributing rewards to one group and penalizing others. Clearly, there will be credit-winners and credit-losers, and with double counting, as more companies participate, more and more pain will be imposed on fewer and fewer non-participating companies. In the extreme case, if all companies participate, the entire system falls apart since there is no entity from which the extra-reductions can be secured.

Considering the Economics

Consider the examples presented in Table 2. Example 2 describes a case in which companies get credit for taking actions they must take to meet their emissions control targets. The credits are given to encourage greenhouse gas controls and create institutional experience with certifying emission credits. Let's consider the economics of such an action.

Illustration 2
Companies 1 and 2 from Table 1 Get "Anyway" Credits

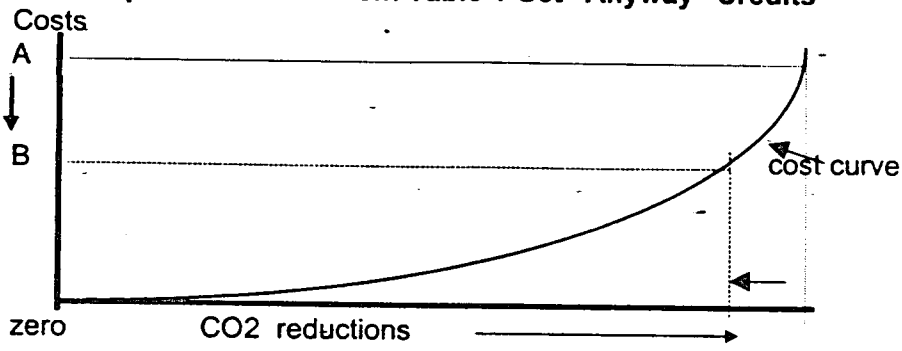


Illustration 3
Effects of "Early Crediting" on Others

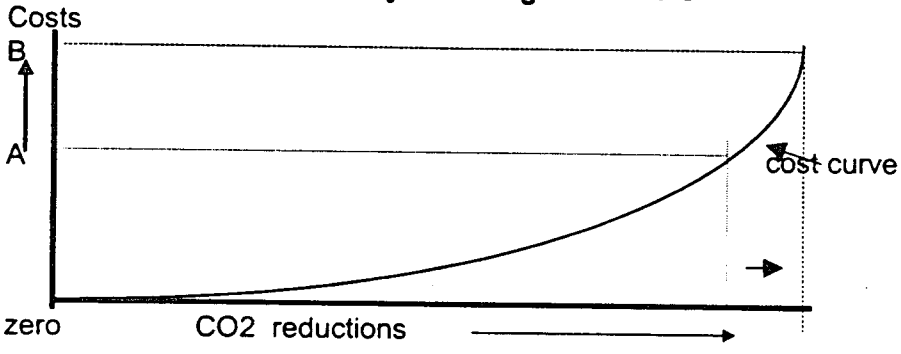


Illustration 4
Effects of "Early Crediting" on Others With Different Curves Reflecting the Cost of Control

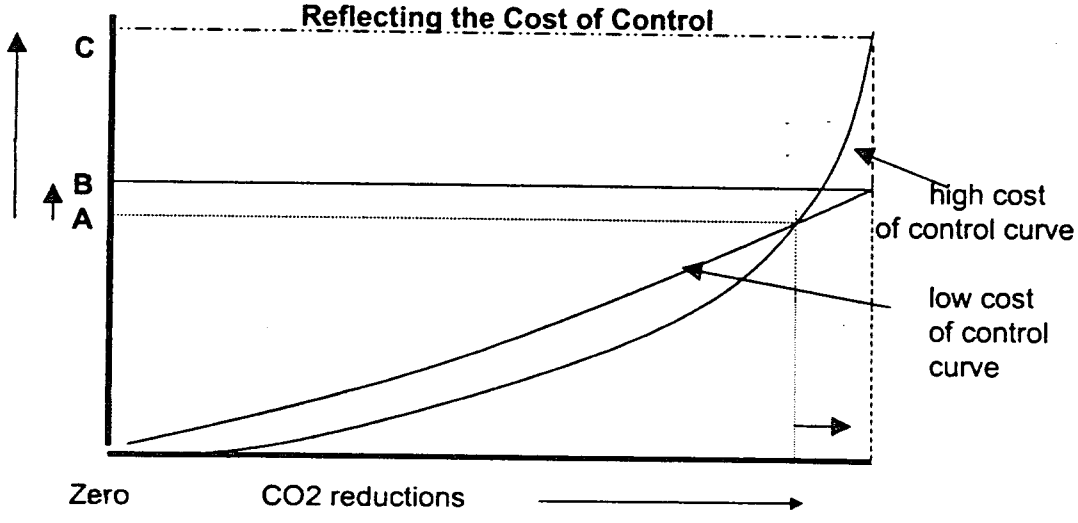


Illustration 2 presents the effects on the cost of control for companies 1 and 2. If these companies can bank emission reductions that would have happened anyway, then

other companies, depicted by Illustration 3, must over-control emissions more than their fair share. For such a transaction to be economically efficient, the cost savings to companies 1 and 2 must be greater than the cost imposed on other companies. Or, in terms of our illustrations, the cost saving represented by AB in Illustration 2 must be greater than the negative cost effects, AB, in Illustration 3.

Illustration 4 shows that "other" companies could have imposed upon them more costly control requirements (line AC) or less costly control requirements (line AB) than the relief offered receivers of early credits (line AB in Illustration 2).

It is not clear that society benefits under all "early credit" proposals. The result depends on the slopes of the curves, the amount of the allocation given to early credit recipients, and other factors beyond the scope of this paper. Transferring costs from one company to another may yield no net economic improvement and there is no a priori reason to expect net economic benefits.

Retrospective, General-Prospective, and Specific-Prospective Early Credit Programs

There are three types of credit-giving programs. One program deals with giving credits for actions that have previously occurred. Another type of program could be future looking and include all types of emission-reducing activities (a general-prospective model.) The third type could be prospective and limited to only specific emission-reducing activities that most stakeholders agree should be encouraged, today.

Previous reductions:

Granting offset-capable reductions for previous reductions might be politically or technically difficult, but not impossible. The environmental benefits have not been demonstrated.

General-prospective reductions:

For reasons described above, prospective reductions that result from all actions might be a difficult program to design and implement. In this case also, the environmental benefits have not been demonstrated.

Crediting reductions from specific-prospective actions:

Early credits from a limited class of future reductions might be the easiest program to design and implement. Offering an early credit program is beyond the scope of this paper; however, one can conjecture that a program that is more easily designed and agreed upon would be characterized by a few policy goals. Such a program would:

(1) Promote innovative clean energy technologies,
(2) Promote exports,
(3) Promote good energy outcomes,

(4) Promote multiple environmental objectives,
(5) Promote participation in the Kyoto process by countries and companies that heretofore have had modest involvement, and
(6) Be consistent with the Kyoto Protocol, as it now stands.

All "Crediting" Ideas Are Not The Same

Rewarding early action can take many forms. It can mean not penalizing good deed doing. It can mean establishing fair emission baselines. It can mean creating systems that reward some companies for what they must do anyway while compensating for this transfer by over-controlling the emissions of others. It can mean creating extra actions to reduce emissions and stimulate clean energy technologies. It can also mean jump-starting the market for international flexibility mechanisms (joint implementation or clean development mechanism transactions). The goals of an early crediting program must be clear and measures for success defined.

This paper concludes with the well-known bromide: "The devil is in the details." Early crediting programs might provide many good environmental and economic results, but the economic and environmental outcomes from each version of early crediting should be carefully analyzed and considered before rushing to accept or reject a particular early credit concept. The author supports early action and early crediting and also supports economic, environmental, and evaluation rigor in establishing such programs.

This paper is intended to provoke comments on the need for analysis with respect to early crediting. The paper did not consider a model where there is international credit or assigned amount trading. The paper did not offer an economic analysis. That will be the subject of a forthcoming paper.

Any comments would be appreciated and should be sent to the author.

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Table 2
Early Credit Examples

Year	2000	1	2	3	4	5	6	7	<---- budget period 8	9	10	11	12	**total emissions for budget period**
Example 1: No early action program: emissions in box are estimates for yearly emissions														
Company	emissions			tons/year					emissions in tons/year					
1	17	16	15	14	13	12	11	10	9	8	7	6	5	35
2	23	22	23	21	19	18	17	14	12	11	10	9	8	50
all others	85								50	45	40	35	30	200
all companies	125								71	64	57	50	43	**285**

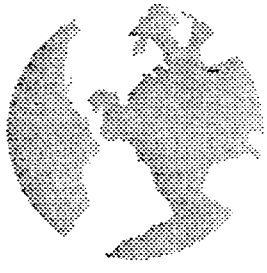
Example 2: Early "crediting"

Company 1 and 2 are given credit for reductions they made (2000-2007) below year 2000 levels. Notice Company 1 and 2 will emit more in year 2008 and other years because they "banked" their early credits for use in the budget period (2000-2012).

Company														
1	17	16	15	14	13	12	11	10	9	8	7	6	5	35
2	23	22	23	21	19	18	17	14	12	11	10	9	8	50
credits for 1	0	1	2	3	4	5	6	7	5	5	6	6	6	28
credits for 2	0	1	0	2	4	5	6	9	5	5	5	6	6	27
Extra reductions	from other companies to compensate for early credits								-10	-10	-11	-12	-12	-55
other companies	85								50	45	40	35	30	200
all companies	125								71	64	57	50	43	**285**

The amount of "credits" derives from reductions made in a year against the baseline year.
Therefore, Company 1 gets 3 tons of credits in year 2003 from a 2000 baseline (17-14).
Extra reductions are required by other sources to cover the 55 tons of early "credits" given to Company 1 and 2 since regulators must meet the budget target of 285.

A Program to Reward Early GHG Reductions



Center for Clean Air Policy
February 17, 1998

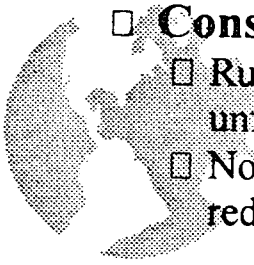
Presented to:
Clean Air Act Advisory Committee's
Subcommittee on Energy, Clean Air and Climate Change

Outline

- Pros/cons of credit for early reductions
- Basic elements of system
- Integration into international system
- How to handle credits registered in 1605(b) database

Why Credit for Early Reductions?

- **Pros**
  - Design smooth transition towards 2008 target
  - Reward emitters for taking early action
  - Build capacity and knowledge of future participants in trading system
- **Cons**
  - Run risk of diluting allowance system through unforeseen loopholes
  - Non participants could face politically untenable reduction targets in 2008

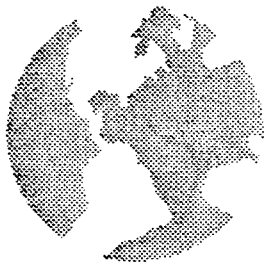


Basic Elements of System

- **1998-2007**
- **Voluntary**
- **Participation**
  - All emitters of GHGs can participate
    - Upstream & downstream emissions
  - Cannot leave system early
    - Once commit to system, must remain for duration
- **Credits**
  - Total allowances distributed in 2008 - 2012are reduced by amount of reductions achieved pre-2008

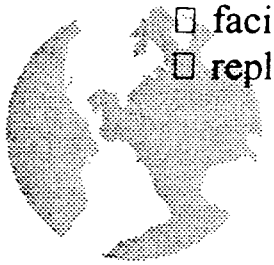
Key Criteria

- Credibility of reductions
- Integration into international system
- Administrative ease



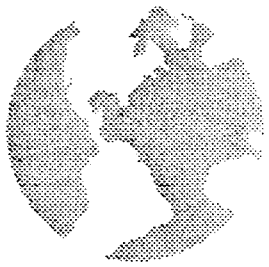
Groundrules for Baselines

- **Baselines and reductions determined on a companywide basis not facility by facility**
- **Normalize for ownership**
  - shutdown
  - facility sell off
  - replacements



Annual Target Level

- **Straight line from actual emission levels in 1998 to 2008 cap**



Credit Accrual and Use

- **Credits will be given only for actual reductions below predetermined baseline**
- **Regulated entities could purchase early reduction credits to meet binding target**
  - i.e. if formal trading system in 2008 is upstream, then early reductions from downstream emitters could be purchased and used by upstream producers

Alternative Methodologies

- **Generation Performance Standard (GPS) for electric utilities**
  - straight line between performance rate in 1997 to expected level in 2008
- **GPS could also be used for new sources**

Integrating Section 1605 (b) GHG Credits

- **Options**
  - All or none
  - Case by case review
    - Count long form only
    - Count only credits that are below stabilization
    - Apply discount factors
- **Credits accepted are annualized and added to 1998 baseline. Or 1% of allowances set aside and issued by formula on discounted basis.**

Integration into Binding System

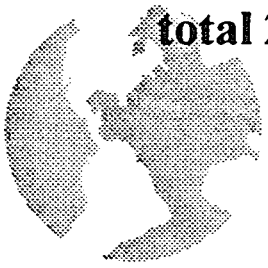
- **Effect on Binding Target**
  - pool of allowances allocated in 2008 - 2012 to comply with binding target will be reduced by 5% to cover early credits
    - 1% of allowances dedicated to 1605 (b) credits
    - 4% dedicated to post-1998 early reductions
- **Relation to Clean Development Mechanism**
  - CDM credits are "additional" -- added to company's 2008 - 2012 allowance allocation

Niagara Mohawk Proposal for Giving Credit to 1605 (b) Filers

1. **100% for projects where entity-wide reports of reductions are below 1990 minus 7% level**
2. **20% credit for project-only reports**
3. **Entity-wide and project reports above 7% threshold receive 100% for projects minus % above the 7% threshold (min. credit = 30%)**

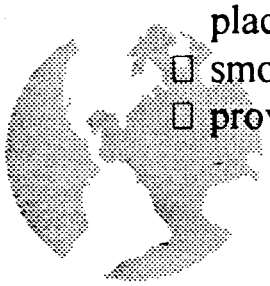
Niagara Mohawk Proposal, cont.

4. **Bonus for filers under 3) above if emissions per unit of output decrease in period.**
5. **Prorate all of the above once basic credit allocation is complete so as not to exceed 1% of total 2008 - 2012 allowances.**



Conclusion

- **Credit for early reductions is a useful tool**
  - achieves actual reductions before mandate
  - educates participants
  - provides momentum to ensure a solid program is in place prior to 2008
  - smoothes transition, so reduces "shock" in 2008
  - provides testing ground for full-fledged system



Air Permit Trading Paradigms for Greenhouse Gases: Why Allowances Won't Work and Credits Will

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AIR PERMIT TRADING PARADIGMS FOR GREENHOUSE GASES: WHY ALLOWANCES WON'T WORK AND CREDITS WILL

BY
JOHN PALMISANO

There has recently been increased interest in the use of market-based systems for air pollution control. That interest has most recently expanded to the climate change arena with the proposed system being the international trade of carbon or greenhouse gas (GHG) reductions. At the same time, the air trading debate is hampered by great confusion over concepts, terms and the results from past programs in the United States which are the basis for supporting an international air trading program. This paper demonstrates that, if done correctly, air trading can be a useful approach to control of GHG and if done poorly, air trading can impede progress toward getting real reductions.

Twenty years of success provide substantial evidence that an air trading program based on credits can move a GHG program forward more quickly and at a lower cost than a command and control program. Such a system would gradually introduce new regulatory structures, accommodate changes in many national energy and environmental regulatory programs and provide the basis for even more cost-effective policies. Meanwhile cost-effective carbon reductions could be made available and real reductions could be achieved in a relatively short time period.

In contrast, a program based on carbon allowances, sometimes called cap-and-trade, is most likely to become an anchor that will restrain the implementation of a GHG mitigation program -- restrained by the time-consuming requirement to develop the entire regulatory infra-structure to support the allowance system before any trades take place.

The choice for regulators and other pro-active stakeholders is simple, do they want the real-world economic benefits that derive from a credit trading system or do they want the theoretically better benefits that come from an allowance system. Is society better off with a high likelihood of something very good or a low likelihood of something only slightly better?

CREDITS AND ALLOWANCES

There are two basic types of air permit trading -- credit systems and allowance systems. Both are known by many names. Table 1 lists some of the alternative names for credits and allowances and the programs in which they are used.

The most common names for credit-based systems are ERCs, "offsets" and "bubbles."

ERCs — An emission reduction credit, or ERC, is an emission reduction which meets certain criteria established by regulators. ERCs must be "real", "surplus", "quantifiable" and "enforceable". An ERC is the common currency of emission credit trading.

Offsetting — Offsetting is the meeting of a pollution control obligation by getting the equivalent reduction elsewhere. In the US, in cities or counties that fail to meet ambient air quality standards, firms constructing major emission sources or major modifications must offset their expected emissions increase

by obtaining emission reductions of the same pollutant from other companies. (See Figure 1 for an example of offsetting in the United States.)

Bubbles — Bubbling provides similar flexibility to existing sources that offsetting provides to new and expanding sources. Using a bubble, a plant manager can make emissions control decisions on a facility-wide basis (as if an imaginary bubble existed over the facility) rather than on a source-by-source basis. Cheap emission reductions can be used to offset expensive emission reductions. (See Figure 1 for an example.)

TABLE 1
NAMES AND EXAMPLES OF CREDIT AND ALLOWANCE PROGRAMS

Credits	Allowances
offset	SO_2 allowance
bubble	marketable permit
netting	RECLAIM
emission reduction credit (ERC)	Illinois VOC Program
joint implementation (JI)	OTR NO_x Budget Program

Both credits and allowances are means of achieving emission reduction goals more efficiently and cost-effectively than with a command and control regulatory system. These good results are achieved by letting market forces determine the best compliance strategy for each source. Both concepts allow sources with low compliance costs to over-comply and sell reductions to sources with higher costs. Both trading mechanisms must be driven by some regulatory requirement for emission reductions, but the requirement and the mechanism are independent. For example, either credits or allowances can be used to implement an emissions cap. Beyond these basic similarities, however, there are some important differences between the two modes of trading that have important implications for their effectiveness in solving air pollution problems. Some of the fundamental differences are related to how the program resolves the following issues:

Baseline- the pre-existing emission level against which creditable emission reductions are measured.

Quantification- the accurate measurement of emissions before and during the creation of reductions; hence the measurement of the difference between before and after emissions, thus by implication the measurement of emission reduction credits or surplus allowances.

Certification - the methods, protocols and regulations that ensure that the reductions being offered for trade are valid and creditable within the requirements of the regulatory program.

Allocation - the process of initially assigning allowances to participating sources in an allowance trading program.

The importance and implications of these issues can be seen by looking closer at the functioning of each type of program.

ALLOWANCE TRADING SYSTEMS IN THE UNITED STATES

In an allowance program, the regulator gives the emitter a transferable permit to emit a certain amount of pollution. This allocation declines over time either in yearly or in an otherwise phased manner. The emitter must either reduce its emissions so it emits less than or equal to its "allowances" or the emitter must obtain allowances from another source. For example, if two regulated sources were in an allowance trading program, they would be given their initial allocation, a schedule for reducing their annual allocation, and the opportunity to meet further reduction requirements by controlling more at their own site or by obtaining allowances from the other source. At no time, however, would the sum of emissions from the two plants be greater than that established for the time period. Table 2 illustrates how this system might work.

TABLE 2
AN ALLOWANCE TRADING EXAMPLE

	Current Emissions	Allocation Starting in 1998	Allocation Starting in 2000	Allocation Starting in 2015	Allocation Starting in 2020
Factory #1	1000	800	720	400	200
Factory #2	3000	2000	1800	1000	500
Total tons/year	4000	2800	2520	1400	700

In this example, factory 1 must reduce its emissions by 20 per cent to comply with its initial allocation while factory 2 must reduce emissions by 33% to comply with its initial allocation. Each factory must reduce emissions from 1998-2000 by 10 percent. By 2015 each factory must reduce their emissions by 50 per cent. By 2020, emissions must be reduced by 75 per cent from the 1998 baseline.

It is obvious that the initial allocation is an important issue. Factory 1's initial allocation is 80 percent of their current emissions while factory 2 has a relatively lower allocation. The per cent removal usually relates to cost and it is very likely that one company will find reductions to be less expensive than the other. This means that one firm has suddenly been endowed with a valuable asset and that firm might, for compensation, over control and sell some of its allowances to the second firm.

Under an allowance system, all sources in a regulated sector must be in the program, even if they choose not to trade allowances. Once established, the program is straightforward because allowances are issued and pre-certified by the regulator at the beginning of the regulatory program. Under some allowance based systems, if actual emissions are below the allocation limit for a given time period, the emitter can bank the difference for future use. Of course, measurement of actual emissions is very important under the allowance system.

A main problem with the allowance system is that all of the issues of baseline, certification and allocation must be settled for all parties, once and for all, before the program can begin. It is very difficult if not impossible to change the program once it is started. This creates great pressure to make the program "perfect" before it begins. These issues are intellectually difficult because the allowance system suddenly grants existing sources a substantial off-book asset;

hence all emitters must be included in regulatory negotiations, a process which slows down the resolution of many issues.

When many conflicting parties (almost all multi-billion dollar companies with considerable economic and political influence) are involved in the resolution, the result can be a "gridlock" and delays in developing other parts of the regulatory system. The result can be multi-year delays in the implementation of an allowance program or the outright death of the system as happened with the hydrocarbon allowance system for Los Angeles.

Some of the issues which must be addressed include:

- Baseline - the baseline must be resolved for all sources in the program before the program can begin. This means addressing historical emission levels which may not have been measured consistently or at all, allowing for non-standard operations during the operation period, units which have come on line since the baseline period and other questions. This issue is very complicated even when addressing one kind of measure from one type of source, such as emission reductions from electric utilities. It becomes much more complicated if an attempt is made to address different end use sectors (industrial, mobile source, residential, etc.) or different kinds of measures (efficiency improvement, repowering, pollution prevention). Because all issues must be resolved to the satisfaction of all participants (all sources must participate) before the program can begin, the geometrically increasing complexity of expanding the program makes it that much more difficult to get the program going.
- Quantification - accurate and appropriate measurement of emissions and reductions is critical to the operation of any trading program. At the same time, measurement requirements which are too costly or complicated will discourage participation in trading. Experience in the United States' SO_2 trading program has shown measurement to be one of the most contentious issues because it imposes large costs on all sources whether or not they ever choose to trade. It also has been one of the largest barriers to expansion of the program through opt-ins or extensions. Again, extending trading to broader sectors exacerbates the problem since each sector has its own problems and methodologies. Bringing in different countries under a carbon trading program adds an entirely different dimension of conflict in units, protocols and historical procedures for emissions measurement. In an allowance program, all of these issues must be resolved before the first trade can take place.
- Certification - the one advantage of an allowance program is that once the allowances are created, they are permanently certified and can be traded without further regulation. The problem is that it is very difficult procedurally and practically to change the quantity of allowances after they have been created. New information on the validity of the allowances, the accuracy of measurement or certification of allowances in the system is difficult to incorporate after creation of the system. This knowledge is another factor that leads the creators of the allowance system to take additional time to make it "perfect".
- Allocation - perhaps the key step in an allowance system is the initial allocation of allowances to the sources. The allocation determines not only who starts out with the "chips" in the allowance trading game but also determines who has low

marginal-cost reductions available to sell. It is a granting of economic value by the regulators that has enormous economic and trade implications. There are a number of basic allocation strategies and an infinite number of variations -- equity, costs, number of years in the regulatory system, or employment impacts. There can be endless discussions on allocation even within one sector and adding additional sectors lengthens the discussion (note that there is no multiple-sector allowance trading program in the United States while there are multi-sector credit based systems). Again, one reason this step is so crucial and time-consuming is because it only happens once.

ALLOWANCE-BASED SYSTEMS IN EUROPE

Allowance trading systems have not been implemented for any air pollutant within or across European countries. Only a few countries have created the opportunity for credit-based systems. Despite the support for these types of systems from economists and policy analysts there has been no large introduction of these systems in Europe for air pollution control.

A recent initiative flowed from the work done by Dr. Ger Klaassen. Dr. Klaassen cites over 200 references in Trading Sulfur Emission Reduction Commitments in Europe: A Theoretical and Empirical Analysis (1995, The International Institute for Applied Systems Analysis). At least one-half are European authors and European organizations. Yet despite outstanding scholarship, support from the academic and public policy communities and support from some countries, the sulfur trading regime that he analyzed failed to be adopted.

The same is true for NOx and hydrocarbon trading -- great ideas, no implementation.

Without going into the reasons and recognizing that there have been a few credit-based trades in Europe, hand-crafted under special circumstances, it is fair to say that implementation air credit trading in Europe has been difficult and the implementation of allowance-based system has been impossible.

Reaching international agreements is even more difficult than reaching national agreements. Reaching international agreements across different systems of property rights, heterogeneity in the quality of environmental programs, and on economic issues is even more difficult when one leaves the relatively common culture and set of regulatory regimes in the European Union and includes the transitional economies, Arab states, and a host of developing countries.

The absence of any large national allowance trading or credit trading program leaves no base for developing the allowance trading program, as was the case in the United States. Specifically, before the United State's sulfur trading program was developed in 1990, there already were thousands of air credit trades and many states had developed air credit trading programs to meet local air quality problems. Thus a large base of human and institutional capital existed upon which the allowance trading program was built. (See Figure 2.)

CREDIT-BASED TRADING SYSTEMS IN THE UNITED STATES

Whereas allowances are created by regulators, in a credit program a source creates a tradable unit by reducing emissions below a regulatory limit. The source has the responsibility to document its baseline and to certify the reduction according to standards and protocols issued

and administered by regulators. Once certified, the reduction is available for use by another source or the source might bank its emission reduction for future use or sale. The source has the responsibility for the documentation that would support the quantification and certification by regulators and trades must be approved by regulators. Since both the creation and use of the credits are individual actions taking place within a regulatory framework, regulators have two opportunities to be assured of the sanctity of a transaction.

The regulatory framework that supports an emission reduction credit (ERC) trading system is simple. Such a system need only specify the environmental concepts that must be demonstrated. Historically these have been that reductions be real, permanent, quantifiable, and enforceable. In addition, the use of an ERC must be environmentally beneficial.

Some Advantages of Credit-based Systems

Speed of Implementation

Issues of baseline, quantification and certification must be resolved by designers of the regulatory system, but not for every regulated entity. This is because not every participant wants to trade. In addition, since an emission reduction credit is granted only after regulatory review and approval, changes in environmental or technology circumstances can be reflected in the granting of more or less reductions based on new conditions. Thus the regulatory framework that supports an ERC system can be quickly developed.

Accommodating Change

As noted above, an allowance-based regulatory system cannot accommodate change, thus forcing regulated entities to fight hard to protect their interests and creating implementation delays. The ERC system, on the other hand, has the flexibility to meet regulator's changing conditions. Hence the ERC system is easier to accept by both regulators and environmentalists and is easier to implement.

Incentive to Maintain Standards

In an ERC system, great emphasis is placed on standards of documentation and certification. It is up to the affected parties to show that they are meeting the requirements for the specific source at issue. Only those firms with an incentive to create or use reductions need get involved in the system and they need only address the issues that affect them directly. The thorny issue of allocation is avoided since the traded currency is created when firms create their ERCs, the common currency of air credit trades.

Real Reductions

The regulatory framework that supports a credit-based system ensures that the reductions are real and environmentally beneficial and requires that individual creators of reductions take the burden of certifying the reductions. Therefore, regulators have more confidence in the environmental outcomes since they have two opportunities to review the reductions -- once when the ERC is created and again when it is used.

Mistakes Can Be Detected and Corrected

Regulators should have an increased comfort level in letting the ERC process go forward because they know that there are chances to ensure that only authentic reductions are created, only authentic reductions can be used to offset existing emission control obligations, and there is an audit trail that documents for third parties the integrity of the complete transaction. This means that fewer regulatory decisions need to be made up front, thus ensuring that a regulatory program can be up and running in the least amount of time.

Flexibility Promotes an Incremental Approach

From the regulatory perspective there are several advantages of a credit-based over an allowance-based system. The system is more flexible because it does not try to define everything all at once and once and for all. It sets functional requirements and lets the participants find the appropriate solutions as needed. As science advances, measurement techniques improve, and new reduction measures become available, creators and users of reductions can incorporate them into their protocols and activities.

Incremental in the Breadth of the Program

Even the coverage of various sectors of the economy (power, transportation, agriculture, etc.) can change over time as long as the reductions meet the basic criteria. In fact, the program coverage does not even have to be defined. Any source which can show real certifiable reductions can enter the program at any time. No source is required to participate. This encourages and rewards innovation and provides opportunity to all sources.

This flexibility of the ERC system prevents the regulatory gridlock which plagues the development of allowance programs. Regulators know that the basic environmental requirements will be upheld. They have opportunities to review and modify the operation of the ERC program. Regulators have less to fear that they overlooked some detail or that they gave away something that can never be retrieved. Sources know that they have flexibility to develop their own approaches if they wish but they are not bound to participate in the ERC trading program -- they can comply by make technology or fuel changes inside their own facilities. Therefore, the program can be quickly implemented and creates the foundation upon which a subsequent allowance-based system can be built. Table 3 and Figure 2 illustrate that success with offsets, bubbling, netting, and emission banking created a base of thousands of informed regulators, environmental professionals within companies, and created institutions that could support allowance trading under the RECLAIM and acid deposition control program.

Some advocates for allowance trading base their argument on the alleged high transactions costs associated with certification and trading. History shows otherwise:

> Certification: It has been claimed that putting the burden of certification on the creators of reductions stifles or prevents trading. Table 3 refutes this assertion. There have been thousands of credit trades of this kind under the United States' bubble, netting and offset policies and no indication from traders or participants in transactions that this process has been a burdensome imposition. In addition, placing the cost of certification on the companies involved in the transaction is

consistent with the polluter-pays-principle. Who else should pay for the certification and associated costs of the credit trade other that the beneficiaries? Finally, given the financial magnitude of most potential carbon trades (literally in the millions of dollars), a few thousand dollars to assure the public of the integrity of the trade is insignificant compared to the cost saving.

High Transaction Costs: While there is the claim that there are high transactions costs under an ERC system, there is no evidence from ERC traders or purchasers that transactions costs have impeded a single offset, bubble, or netting transaction. This assertion has never been supported by data.

TABLE 3
A SUMMARY OF EMISSIONS TRADING CONCEPTS AND OUTCOMES
DATA COVERS 1976-1993

Name of Instrument	Estimated Number of Transactions	Estimated Number of External Transactions	Estimated Cost Savings	Environmental Quality Impact
Netting (offsets used in attainment areas)	5,000 - 12,000	none	$25 - 300 million in permitting costs and $500 - 12,000 million in emission control costs	insignificant
Offsets (used in non-attainment areas)	more than 1,800	200	probably in the hundreds of millions of dollars	insignificant
Bubbles (approved by US EPA)	40	2	$300 million	insignificant
Bubbles (approved at the state level)	89	0	$135 million	insignificant
Banking	under 100	under 20	small	insignificant

Source: Foster and Hahn (1994)
Note: The costs savings presented above should be even larger since Foster and Hahn's data was from 1976-1993.

JOINT IMPLEMENTATION

Joint implementation, JI, is the general concept that people refer to when they think of an international carbon trading regime. It was developed so there would be flexibility for countries and companies to meet carbon control requirements and to encourage groups of countries to join together to fulfill their commitments collectively at the lowest global cost. The Framework Convention on Climate Change embraces both the allowance model and the emission credit model of air trading. However, all activities in the pre-pilot phase and the pilot phase of JI have been credit-based. All the analyses of JI projects has been based on the notion of credit giving. In addition, the United States' and other countries' JI-advocacy programs are credit based.

JI experiments have proceeded as credit based precisely because it is easier to implement – all we need to understand is the company's initial regulatory control obligation, the credit generator's control obligation, and the rules for credit granting. Sector-wide commitments are not required to be resolved for either the buyer or seller of the credit. There would not be a demonstration of the viability of GHG trading if we had to wait for advance resolution of all the issues required for an allowance program. The fact that the first air trading systems in the United States were credit-based is no accident. The system is easier to implement than the allowance-based system. The fact that the first carbon trading systems developed for cross-country transactions were credit based is no accident; credit systems are easier to implement across cultures than are allowance based systems.

While an allowance based system might provide slightly better cost reductions than a credit based system, the question is whether we can afford or will ever have the time to resolve those issues inherent in the design and implementation of an allowance system.

ALLOWANCE BASED SYSTEMS EVOLVE FROM CREDIT BASED SYSTEMS

Credit programs have been established in every U.S. state. Trades can go and have gone forward as soon as the basic criteria are established. In contrast, there are only two U.S. allowance trading programs in operation today. The SO_2 allowance system under Title IV of the Clean Air Act Amendments of 1990 took several years to design and almost five years to implement, although it affects only one highly centralized sector, the electric utility industry, and one centralized regulatory authority, the United States Environmental Protection Agency. Indeed, the initial universe of affected sources was comprised of approximately 110 discrete power plants in the United States compared to thousands that would come under a JI program for carbon emissions. Yet this system was built on more than 10 years of experience in the United States, the existence of one culture and one language, one overarching regulatory system, over 5,000 pre-existing ERC transactions, and thousands of people who have either participated in trades or attended conferences explaining how the system works. No such foundation exists to support the development of an international, inter-cultural, and multi-lingual carbon trading system.

The RECLAIM program is an allowance based system that migrated from an ERC system – developed and perfected from 1976 through 1990. It is used in Southern California's South Coast Air Quality Management District. RECLAIM took more than five years to develop and now, under RECLAIM trading rules, SOx and NO_x allowances are traded in a small geographic region. It is worth noting that the RECLAIM program was built on a regulatory

infrastructure that supported the most ERC transactions in the United States and was supported by at least one meeting a week among regulators, industry, and environmental interests discussing how to resolve allowance related issues during a three to four year period (see Figure 2). To further illustrate the difficulties in developing an allowance system, a recent effort to extend the RECLAIM system to volatile organic compounds (VOCs) died after the stakeholders could not agree on the structure of the program. Finally, a VOC allowance trading system for Illinois was conceptualized in 1993 and has been under development since then; it is scheduled to be proposed as a regulation by August 1996 with the hope of it going into effect in 1999! For whatever reasons, allowance-based systems are hard to develop.

In fact, rather than facilitate the development of allowance programs, these early allowance programs have sometimes done the opposite by making stakeholders more sensitive to the implications of the allowance program design issues. With better understanding, the stakeholders are less willing to compromise in the development of allowance programs. Since the programs cannot go forward until every issue is resolved, the process gets longer and longer and, in some cases, dies. Allowance trading programs for VOCs in the state of Illinois and for NO_x in the Ozone Transport Region (the Eastern States of the United States) have been years in development and are not yet complete. Development an inter-state NO_x trading for the states East of the Mississippi River seems to be moving slower and slower. Allowance trading programs for SO_2 and NO_x in Europe died before the issues could be resolved.

All of these allowance trading efforts have been for individual states or small regions with close preexisting economic ties and common cultures. The prospects are dim to achieve an agreement on JI-allowances among a diverse international community of stakeholders with different cultures, legal and regulatory systems, levels of development, and economic systems.

CONCLUSIONS

There is ample proof that air trading allows emission reductions to take place more rapidly and cost-effectively. Air trading is critically important to the cost-effective reduction of greenhouse gases. At the same time, the specific form of trading must be carefully chosen or it will slow rather than speed the process.

Everything we have learned about air trading tells us that establishing an allowance program for multiple sectors in multiple countries will be an endless process that will delay or thwart our overall response to potential problems associated with climate change. In contrast, the establishment of a credit trading program can be done quickly and will accelerate reductions of GHG.

The key to the development of a regulatory framework for controlling and reducing Annex 1 carbon emissions is the development of a cost-reducing tradable permit system. The only system being seriously considered is an tradable permit system based on trading ERCs. The only system that can be designed and implemented in any reasonable time frame is an ERC system. Therefore, regulators and stakeholders should focus now on the credit trading framework and begin the development of the protocols and frameworks that will allow creators and users of reductions to develop their projects. Figure 3 illustrates how an ERC trading system can be incrementally introduced, can save money, can support the development of a carbon control regime and can lay the foundation for a broader allowance-like system.

It is both distracting and unproductive to waste time and money assessing the theoretical benefits of an allowance system when there is little or no constituency for it and substantial real-world examples exist that demonstrate the impossibility of designing and implementing such a system over any reasonable time period. The supporters of an allowance based system face a high hurdle in demonstrating that such a system can be designed and implemented across cultures, across different regulatory programs, and across different legal systems when it took several years to develop the sulfur allowance trading system in the United States. Meanwhile they have not been able to design and implement another such system during the last six years despite a considerable effort to do so.

Industry understands the value of air trading. Industry has the incentive and innovative spark to find new, cost-effective and administratively less intrusive ways to create and use reductions. Given a framework in which to work, industry will lead rather than retard the process. It is up to the regulators to agree on the correct approach and to begin to develop the framework in which this can go forward.

Industry that supports the cost-effective reduction of carbon emissions will support the ERC system. This system builds on JI and, as a result, it can be quickly institutionalized in many countries.

Those interested in sending regulators into a regulatory swamp from which almost no one emerges will love the allowance based system. This is not to say that all or any advocates of the allowance-based system want to sabotage progress toward reducing carbon emissions. Yet the last ten years of implementation experience suggest that implementation, even in one country, is difficult.

Even well meaning initiatives can backfire if not thought out. The unintended consequence of seeking perfection is to freeze both institutionalizing a regulatory regime for the control and reduction of carbon emissions and getting real reductions. This is because under the allowance based system, many, if not all, sources will unite around the cost-effectiveness banner and refuse to get high cost reductions now when the trading system will be "just around the corner."

> "Why spend £ 100 for a ton of domestic reductions today when reductions will cost 1/10 or less under the proposed allowance system, when it finally is implemented?"

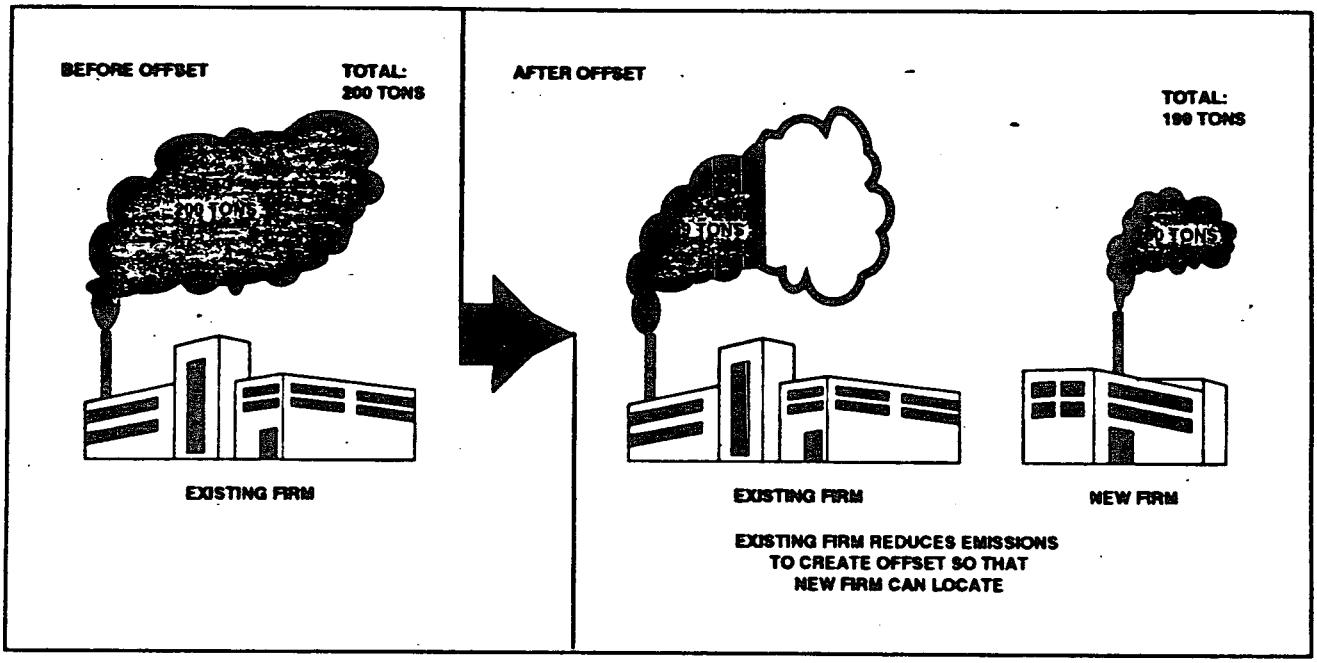
The problem for the environment is that it may never get implemented.

For anyone with a hidden agenda to abort a carbon control program, a search for perfection leads to the same outcome as an outright rejection of a carbon-control regulatory regime. After all, it is far cheaper to study and discuss how a perfect system might work in the future than comply today with a system that provides substantially all of the same cost savings.

The choice is clear -- we can start cost-effectively achieving reductions in greenhouse gas reductions starting in 2000 or we can have rhetoric forever.

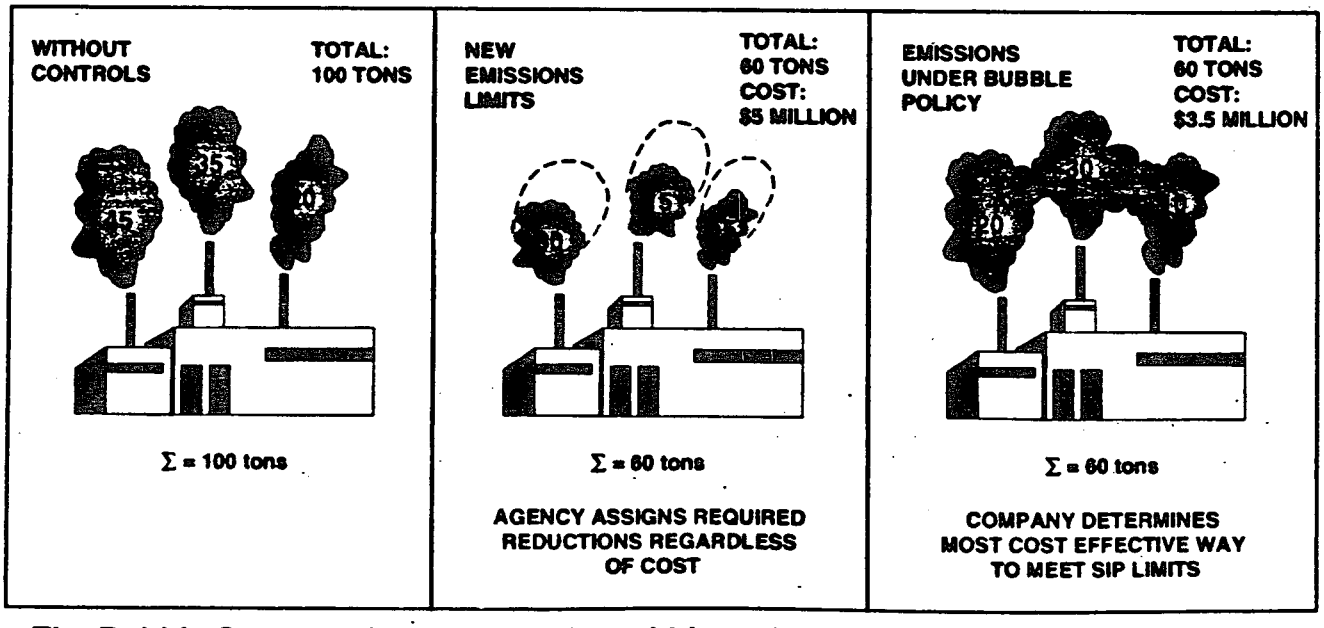
Figure 1
HOW CREDIT TRADING WORKS

EPA'S OFFSET POLICY FOR NEW SOURCES



All new sources in dirty air areas must offset their new emissions

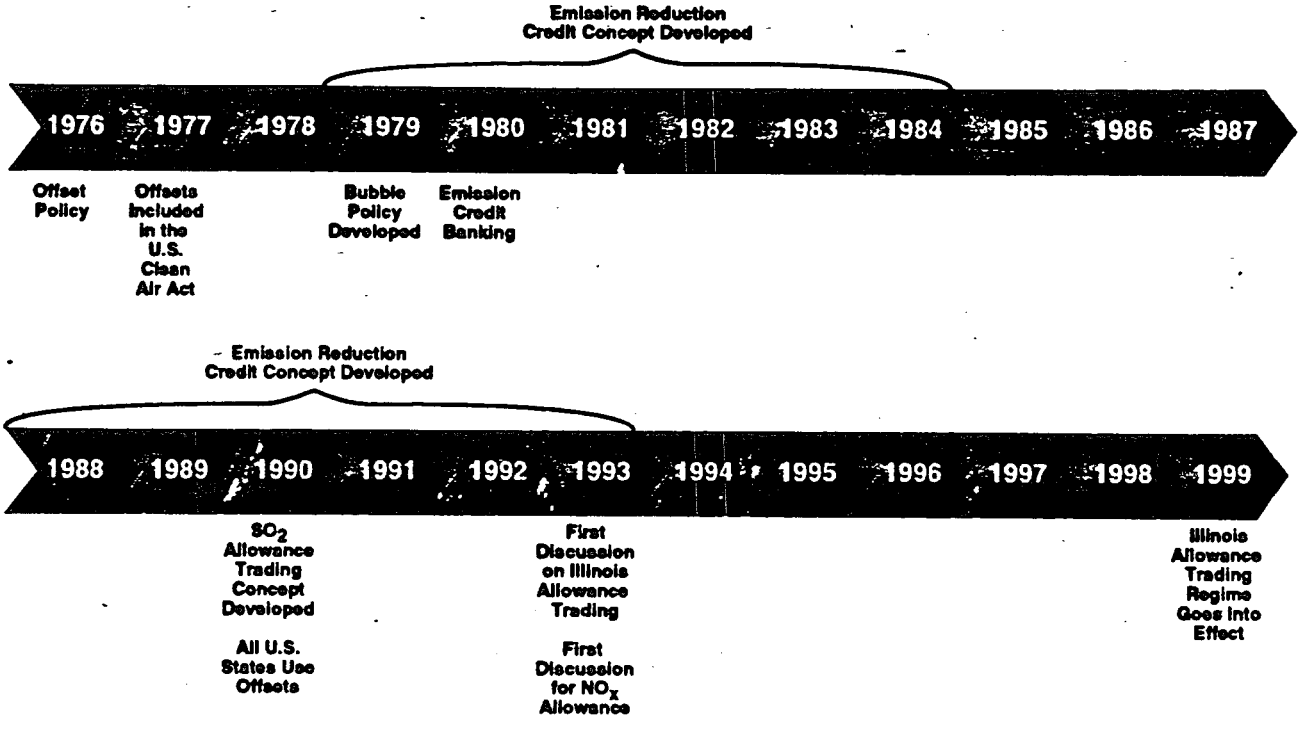
EPA'S BUBBLE POLICY FOR EXISTING SOURCES



The Bubble Concept allows for trading within a plant, company, across companies or across countries. What is traded is an Emission Reduction Credit (ERC).

Figure 2
EMISSION REDUCTION CREDITS FORM THE BASIS FOR AIR TRADING

HISTORY OF AIR TRADING IN THE U.S.



BUILDING FOR SUCCESS

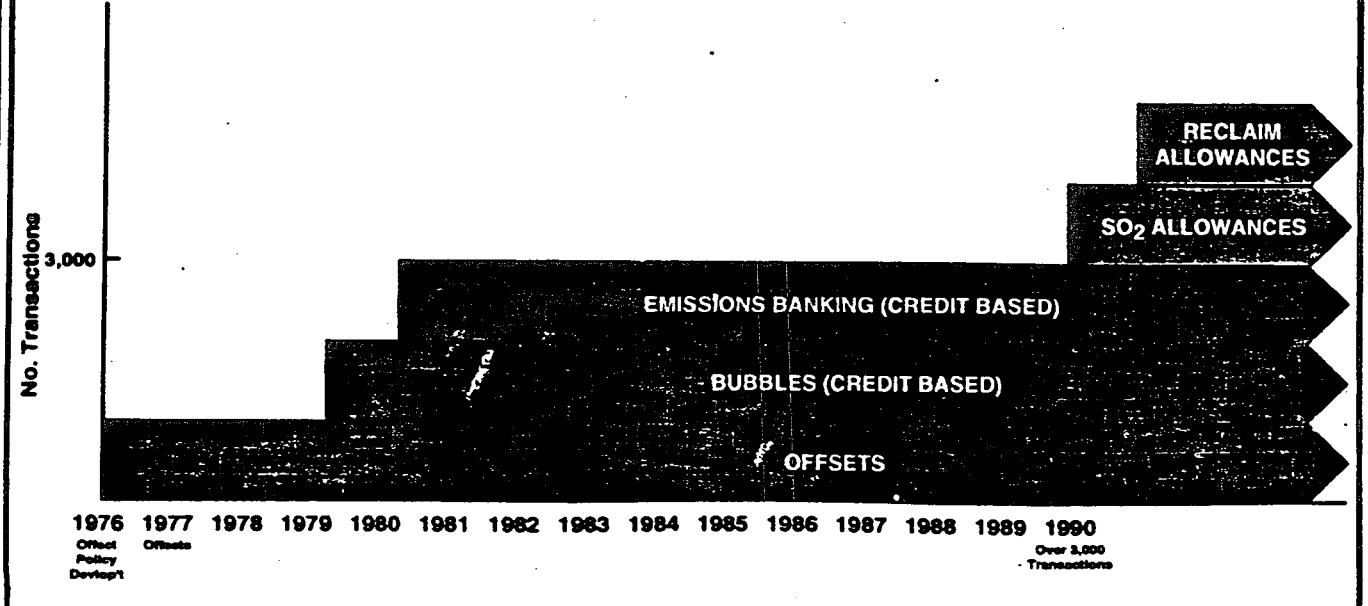
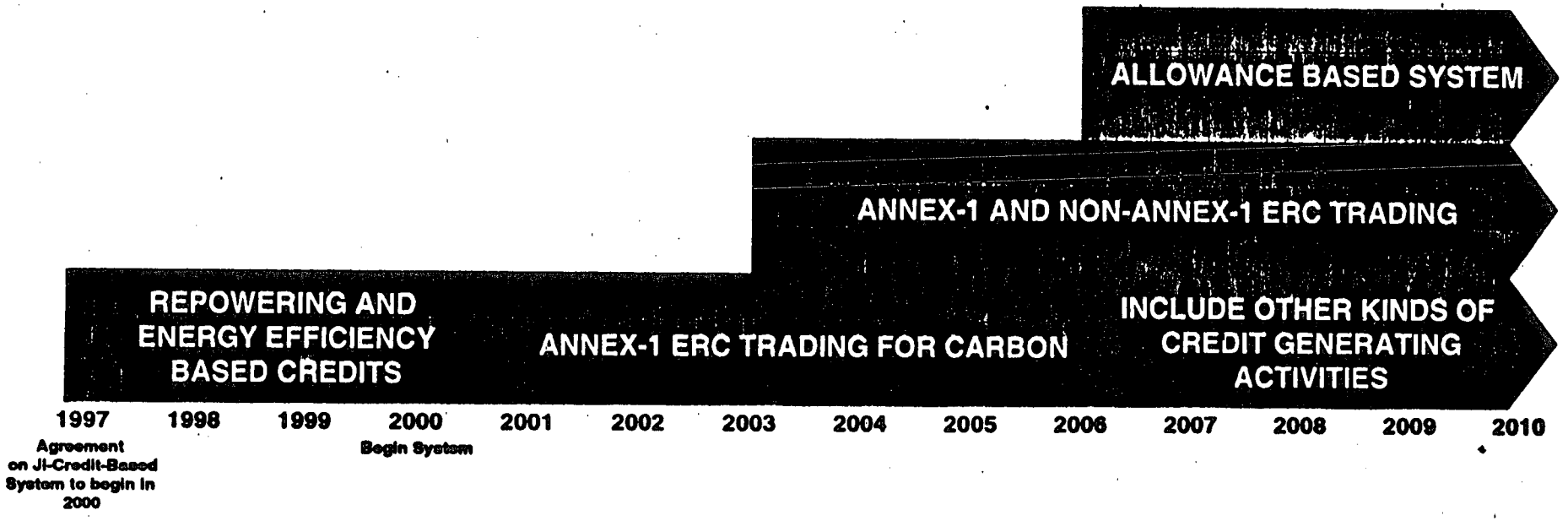


Figure 3
AN EXAMPLE:
BUILDING FOR SUCCESS
A CARBON TRADING REGIME



Briefing

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Establishing a Market in Emissions Credits: A Business Perspective

by

John Palmisano

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Foreword

Scientists continue to debate whether global warming is occurring and, if it is, whether it will be harmful. In the absence of definitive answers, policy makers the world over are devising mechanisms to limit emissions of Greenhouse Gases (GHGs).

This paper by John Palmisano introduces the concept of Joint Implementation, and recommends the creation of an emissions trading system for GHGs. Although it would not establish an entirely unfettered market, this approach could potentially lower the costs of complying with the energy reductions and emissions targets under discussion.

We are pleased to offer this IEA Environment Briefing. This paper solely reflects the views of the author, John Palmisano, and not necessarily those of his employer, Enron Europe Ltd., or those of the Institute (which has no corporate view), its Trustees, Advisers or Directors.

ROGER BATE

Director, IEA Environment Unit

July 1996

The Author

John Palmisano develops, implements and advocates environmental and energy policies for Enron Europe Ltd. Previously, he was Director of the Environmental Policy Group for Enron Capital and Trade Resources.

Since 1976, Mr Palmisano has been working on applying economic instruments to achieve energy and environmental goals. He managed the design and implementation of the US EPA's Bubble Policy and created the first air credit trading company, AER*X. From 1984 through 1993, as President of AER*X, he participated in over 70 emission trades. He managed the US EPA staff that developed the concept of environmental auditing and was one of the founders of the Institute for Environmental Auditing and the Environmental Audit Forum.

He has participated in over 100 studies related to market-based energy and environmental programmes for federal, state and local government agencies, trade associations, the World Bank and industrial clients.

Mr Palmisano has a BS and MA in Economics from the University of Maryland.

Introduction

It has been over 200 years since Adam Smith first described how markets efficiently and quickly provide goods and services. As though there is an invisible hand, markets move resources to their most efficient use. From this observation and from hundreds of confirming studies, it follows that the use of markets is the most cost-effective way in which we can achieve environmental goals.

At the close of the twentieth century, there is a world-wide recognition of the power of markets to promote low-cost and high quality products and services. Although the environmental movement is only about 30 years old, there already exists a substantial body of theory and evidence which confirms the power of economic instruments to achieve regulatory goals.

Pollution charges have the potential to be a powerful tool to limit undesirable discharges into the air and water. This is the basis of many environmental programmes in the former Soviet Union and Eastern Europe.

In addition, water and air pollution can be limited by capping discharges and forcing dischargers to buy discharge permits from each other or from the state. In fact, since 1976 the United States has experimented with, and now widely employs, a variety of marketable-permit-like instruments either to attain or to maintain ambient air and water quality standards. And since their inception, out of hundreds of academic and popularised studies and articles, there has not been a single study that challenges the superior efficiency outcomes which result from using tradable permits. Reinforcing the widely held view that marketable-permit-like systems can achieve regulatory goals in a cost-effective manner are studies conducted for the United States Congress, the United States Environmental Protection Agency (EPA), the United States Government Accounting Office, the United States National Science Foundation, the United States National Academy of Public Administration, United States Library of Congress, OECD, environmental ministries in Canada, the Netherlands, and Norway, and numerous studies conducted by the United Nations. Supporting all of these analyses is 20 years of real world experience and over five billion dollars in cost savings!

Today, many scientists have argued that anthropogenic greenhouse gas emissions may result in climate change. For example, the recent Inter-governmental Panel on Climate Change Second Assessment Report had over 350 scientists as contributing authors. and 545 reviewers. The report concluded that there is a discernible human influence on climate change and that this influence contributes to a potential 2° (Celsius) increase and potentially a 95 cm sea-level rise. And while the dimensions of the problem are still in doubt, given the 1 - 3.5° range of uncertainty, many stakeholder groups and governmental institutions are advocating policies that will limit and then rollback greenhouse gas emissions.

Business persons and economists have much to contribute to this debate regarding how best to meet the challenge associated with global warming. In particular, economists have studied how a regulatory programme might be best designed to achieve specific goals, and what combination of instruments might be employed to get the most cost-effective and administratively easy environmental results. The two most promising tools for achieving cost-effective solutions are pollution charges and marketable permits.

Business people also know much about resource allocation, especially under conditions of risk and uncertainty. Business people know how to plan and how to account for technological change. Business people know better than the most benevolent regulator how most cost-effectively to meet any regulatory standard. Clearly, leaving industry with the flexibility to determine how greenhouse gas reductions will be achieved will benefit industry and consumers; it will also simplify the job of environmental regulators. Therefore, in fashioning regulations, public policy-makers should seek programmes that harness the private sector's interests and energies while retaining strict oversight and accountability.

The question before business, economists and policy analysts is how they might conspire with regulators to shape a world-wide greenhouse gas reduction programme that achieves control targets in a timely and enforceable manner. This monograph speaks to that issue.

1. SUMMARY

Concerns about climate change are real. While acknowledging that climate change is a complex scientific problem, the IPCC Second Assessment Report maintains its predictions that atmospheric carbon loading is linked to global warming. The IPCC asserts that this influence may alter weather patterns and potentially produce more severe storms, and will increase the likelihood of droughts, heatwaves and frosts in many parts of the world. Not only is there the potential for a general warming, but there is a threat of greater variations in temperature; variations with which natural migrations of flora cannot keep pace.

Economists, scientists and business people who call for an aggressive programme of abatement are gaining listeners while even those who advocate a more modest response acknowledge the benefits of establishing institutional mechanisms that could support obtaining emission reduction targets and firm timetables, should the science (in their opinion) support actions that dictate immediate reductions. As a result, responsible industry is considering how it should participate in the development of policies, programmes and projects that respond to the threat of climate change.

The response by industry will be varied and widespread. Not only will mitigation programmes cost money, they will shift resources, create new industries, expedite the decline of already faltering industries, and even make some currently healthy industries somewhat shaky.

Even the most modest programme will have far-reaching effects. For example, not only will there be the wider application of so-called 'environmentally-friendly' transport, energy and agricultural polices, there will be a trickle-down effect of these policies on the purchasing decisions of billions of economic agents. After all, that is exactly what 'environmentally-friendly' policies are intended to do.

There will be further application of existing clean technologies while new technologies are developed. Therefore, activities like energy auditing, which is primarily human-capital intensive, may expand rapidly rather than slowly as might be the case under a business-as-usual scenario. In addition, technologies such as fuel-cells and solar power may grow very rapidly while relatively dirty technologies decline.

The demand for professional services such as financial accounting, business consulting, and engineering will increase. This is because big business will develop long-run greenhouse gas mitigation programmes which must be based on the idiosyncratic needs of each company for carbon reductions. Enforcement of carbon limits may stimulate a new generation of monitoring and measurement technologies. Company-specific greenhouse gas mitigation strategies will require the comparison of alternative greenhouse gas controls on inputs, productions processes and end-of-pipe controls. Such comparisons send powerful signals to those companies that specialise in the development, production and marketing of greenhouse gas mitigation technologies.

Given the breadth of the activities affected by potential greenhouse gas mitigation, the market for greenhouse gas-reducing services and technologies will be extensive and, of course, customised to the specific circumstances of clients. The clients will be geographically and sectorally varied:

- the forest managers in Pakistan who want to sequester carbon;
- the animal breeders in New Zealand who change the feed for ruminates;
- the power-plant developers in Coventry who must account for the financial consequences of the new power project;
- the Korean turbine blade designers who must think about the Coventry project developer's costs;
- the Danish energy efficiency providers who will consider expanding production because of the added value their insulation provides versus supply-side energy solutions; and
- the Brazilian automobile manufacturers who may re-focus design energies on compressed natural gas-fired or fly-wheel-based bus technologies.

One important element of a world-wide greenhouse gas regulatory programme is the idea of joint implementation or JI. JI provisions for meeting greenhouse gas reduction obligations have been introduced into the Framework Convention for Climate Change. Besides being allowed under the FCCC, JI has been endorsed by the United Nations Committee on Trade and Development, the governments of Bolivia,

the United States, and many others.

JI means that countries can, in some fashion, join their regulatory programmes. There are two kinds of JI activities.

The first has as its goal the creation of projects that reduce emissions in one country, A, so the reductions can be used in place of expensive emission reductions in a second country, B. By joining their regulatory programmes, cost-effective emission reductions can be 'mined' and sold to companies in another country. The full development of JI could lead to a world-wide market in carbon reduction credits and could substantially mitigate compliance costs. For our purposes, project-specific JI activities will be referred to as JI-P.

A second kind of JI project is not limited to investments that produce direct emission reductions but includes a more general form of co-operation between countries to create the infra-structure that will encourage individual projects. For example, in many countries there is inadequate monitoring and enforcement of CO_2 emitters. Developing the institutions and administrative procedures that would support specific projects contributes toward reducing emissions. Absent such systems, no project is credit worthy or enforceable. For our purposes, JI projects that encourage institution building will be referred to as JI-I. Because most of this paper addresses JI-P activities, JI and JI-P will be interchangeable unless otherwise noted.

It is interesting to note that while JI-I activities actually set the stage for projects to be developed by the private sector, non-governmental organisations (NGOs) that have heretofore been the focus of JI activities have chosen to pursue JI projects instead of institution building. This result is contrary to the notion that it is better to 'teach how to fish than to merely give a fish to the needy'. In the long-run, only after institution building is successful will industry fully embrace JI.

A second dichotomy is associated with the views of governments and other stakeholders on the issue of how JI should operate. Should JI be a government-to-government programme which aggregates demand on one side and supply on the other? Or, should JI be a business-to-business transaction which is conducted after agreements are reached between governments and under specific reporting, liability and administrative rules? Some countries prefer the former, government-to-

government model while others, the United States, for example, see JI as being company-based. Under the latter paradigm, the roles of countries are to:

- describe the rules for conducting transactions;
- establish enabling bilateral or multi-lateral legal frameworks; and
- meet reporting and other obligations pursuant to the bilateral and multi-lateral agreements.

From a business perspective, the latter model is preferred. Business can conduct its affairs better than NGOs or government agencies. Business should be the agent that implements JI while national regulators oversee the process.

While governments can set the stage for industry to pursue JI projects, ultimately it is industry that will seek out or avoid international entanglements that might hobble their ability to meet national greenhouse gas goals. And while JI appears to be very cost-effective, it is perceived by some stakeholders to be fraught with risks.

This paper concludes that while JI should be part of countries' mitigation strategies. JI makes sense only when certain conditions are met. Since business will be the generators and users of JI-based emission reductions, understanding JI from a business perspective is very important.

From a business person's perspective:

- JI must be part of any international regulatory programme, otherwise the cost of such a regulatory programme will be many times that which is required to solve the problem.

- Any traded reduction under a JI programme must be real, surplus, measurable, auditable and certifiable as measured under unique and internationally accepted standards.

- JI should be implemented in a step-by-step fashion - first with countries that share common legal, financial and environmental programmes of similar integrity. Then the programme could be expanded to include other

projects that meet the same level of legal and regulatory integrity. The evolution of a 'rolling' JI programme would also include rolling in ever more complex carbon reducing actions: first, simple projects to measure repowering and other supply-side options; then more complex demand-side projects; and finally, more complex sequestering projects.

- The integrity of the JI programme must be established from the outset and maintained throughout the life of the programme.

- No post-2000 credit should be given for transactions that occur during the experimental phase of JI.

- JI-based reductions cannot come from countries whose regulatory programme does not meet minimum standards unless and until the generator of the reduction takes on extra-national and enforceable obligations.

- Liability for meeting certain standards rests with the generator of the reduction.

- JI projects should be audited and reductions verified at least once a year.

- JI reductions should be tradable to third and fourth parties as long as no rule of responsibility, liability, or recourse is broken.

- An ongoing evaluation system should be created and employed to assess the state of the JI programme.

- Any mid-course correction to an international or national greenhouse gas regulatory regime should not go into effect within less than three years of adoption by relevant regulators.

Immediate action items are:

- the initiation of a broad-sweeping and internationally-supervised evaluation of initial JI and JI-related activities;

- the encouragement of NGOs and many donor countries to focus their resources on JI-I activities because industry will not invest in promoting the regulatory infra-structure in developing and transitional economies, and JI-P activities are better developed and managed by the private sector;

- the development of a criterion and schedule for 'rolling out' a post-2000 and creditable JI programme whereby certain kinds of projects become eligible for JI crediting in years 1 and 2 of the programme while other kinds of projects become creditable in years 3 and 4, and still other projects are permissible in years 5 and 6; and

- the intervention of the world-wide business community in the process of certification, assignment of liabilities, and the establishment of an ongoing oversight programme and a penalty programme.

The world is rapidly changing. Technology, travel and economic development all conspire to close the technology and GNP gap between developed and developing countries. JI will be forged out of an international negotiating process that is very different from some of its predecessors. The League of Nations and the United Nations were founded by those with a Western orientation and during a period of domination of Eastern, Southern and multi-racial peoples by Western countries and Western culture. Arrangements that define JI will flow from a very different political and economic circumstance.

JI must make sense not just to the Western-educated leaders of nations and the highly-educated and well-travelled business people and environmental NGOs that will help shape any implementing treaty. It will also need to be harmonised with the views

and cultures of countries which will be major parts of the world's economic engine during the next 20 years and beyond.

Big business is international. It is outward looking and integrated into a fabric of customer and supplier needs, civic duty and conformance with local culture. JI cannot be seen as a symbol of cultural imperialism, crafted in Western-speak, marketed to the developing and non-Western developed world in Western garb. JI cannot be marketed that way and it should not be designed that way.

Only through an international partnership of business, regulators and NGOs can a JI programme that meets the above stated goals be developed and implemented as part of a greenhouse gas control programme with targets, timetables and sanctions for non-compliance.

Serious initiatives for cost-effective solutions to global climate change must be forthcoming from Western and non-Western industry. Through such a dialogue, new definitions of JI and new administrative procedures might come forward to make JI work for the economic and political structures of the 20th and 21st centuries.

Global climate change may be one of the most ecologically-threatening problems now facing the world. Global climate change can affect animal and plant life, fisheries, soil erosion and human health. In short, global climate change can affect every aspect of our lives.

The IPCC Second Assessment Report concluded that climate change could produce serious and strong implications for soils, water and human health. The IPCC concluded from their various model projections that:

- The current average rate of global warming is greater than experienced during the last 10,000 years. As a result, there will be a reduction in biodiversity: entire forests may disappear, some forests will undergo a large-scale loss of trees, and some species with climatic ranges limited to mountain tops could become extinct.

- The projected doubling of CO_2 may yield an increased risk of hunger and famine in some locations, especially in areas which already are frequently threatened with famine.

- The IPCC projected rate of warming - about .3°C/A per decade - is beyond the limit for ecosystems to adapt. As a result, whole cultures will disappear, some small island nations and other countries will confront greater vulnerability, and a sea-level rise will continue for many centuries after greenhouse gas concentrations are stabilised.

- Side effects of global warming will include an increase in the size and persistence of the ozone hole, adverse effects on fisheries and the spread of disease vectors.

In short, global climate change may be a serious and difficult process to reverse.

Essentially, the problem is that too many greenhouse gases escape into the atmosphere. Greenhouse gases accumulate, they are persistent, and reductions today only slowly mitigate negative impacts that have accumulated over time. Greenhouse gas emissions are not location-dependent. The IPCC report concludes that it is important to curtail the quantity of emissions as soon as possible.

Economists and policy analysts have long considered how such environmental problems should best be managed. While there is never a single instrument which solves all public policy problems, the use of economic instruments such as taxes and the trading of marketable permits has been shown to be cost-effective, environmentally-friendly and equitable. Yet the tools are only effective when complemented by stringent monitoring requirements, high penalties and vigorous enforcement.

Almost every country and international organisation endorses the use of market-based environmental solutions and the author considers that any comprehensive climate change treaty endorsed by the developed economies will, of necessity, include either a tax or marketable permit component. In fact, a marketable permit component of a direct command-and-control programme has been developed under the FCCC as an experiment. The foundations of this experiment are described below.

3. THE US EMISSIONS TRADING PROGRAMME

Emissions trading started in the United States in 1976. It was developed to promote cost-effectiveness and innovation in pollution control, and to better leverage scarce regulatory resources. The concept is based on the notion of marketable permits with the common currency being the emission reduction credit, or ERC.

Emissions trading (ET) tools can be used in both dirty-air areas and clean-air areas. They can be used by both new and existing sources of regulated emissions. ET was not intended to be, nor has it been, a replacement to an existing command-and-control-based regulatory programme. Rather, ET has been a complement to achieve emission reductions as cost-effectively as possible.

The fundamental concept was that where location differences of emissions are not important, society is better off with inexpensive rather than expensive emission reductions. Secondly, industry will know more than regulators about how to get cheap reductions. And thirdly, by creating a market for emission reductions which have either a salutary or neutral effect on the environment, regulators can leverage the profit-seeking motives of industry to meet environmental targets. All of these goals have been reached through 20 years of success with the following tools.

The emissions trading policy developed by the US EPA comprises five elements:

ERCs

An emission reduction credit, or ERC, is an emission reduction which meets certain criteria established by EPA. ERCs must be 'real', 'surplus', 'quantifiable' and 'enforceable'. An ERC is the common currency of emission trading. An ERC may be applied to an air pollution control requirement through administrative procedures for new and existing sources, or stored in an emissions bank for future use.

Banking

Emissions banking policies give firms a legal means to store surplus emission reductions for later use.

Offsetting	In cities or counties that fail to meet ambient air quality standards. firms constructing major emission sources or making major modifications must offset their expected emissions increase by obtaining emission reductions of the same pollutant from other companies.
Bubbling	Bubbling provides similar flexibility to existing sources that offsetting provides to new and expanding sources. Using a bubble, a plant manager can make emissions control decisions on a facility-wide basis (as if an imaginary bubble existed over the facility) rather than on a source-by-source basis. Cheap emission reductions can be used to offset expensive ones.
Netting	This permits a modified source to use ERCs from another source within the same plant in order to reduce the net level of emissions below that which is considered significant and thus avoid select and onerous new source review requirements.

Emissions trading consists of voluntary and mandatory programmes. In both attainment and non-attainment areas, firms can use emissions banking as a means to certify and store emission credits. Note, however, that all emissions trading alternatives *except offsetting* are voluntary. Offsetting is required for all new sources and major modifications in non-attainment areas. Therefore, as the definition of 'new sources' or 'major modification' becomes more stringent, more firms will be caught in the offset regulatory net.

Offsets and ERCs are related concepts. ERCs can be used to meet the offset requirement and are thus called offsets. Offsets are emission reductions created by one source for use at the same or another source to negate that source's emissions or ambient impact. Types of sources which can create emission reductions include stationary, area

and mobile. Possible methods of creating emission reductions include: installing extra pollution controls; changing a production or pollution control process; altering process inputs such as fuels and raw materials; shutting down a unit or facility; reducing the number of operating hours or production shifts; and reducing emission rates.

Not all emission reductions are eligible to be used for offsetting purposes. There are restrictions on the types of sources which can create offsets and the characteristics of the emission reduction, including when it occurred, how it is calculated and whether or not it is enforceable. Emission reductions must also meet certain geographic restrictions, as dictated by the location of the source needing the offsets, the attainment status of the area and the type of pollutant involved.

Emission reductions must also meet minimum approval criteria established by EPA. Reductions which are officially certified as meeting applicable requirements and which are recognised by the state through a formal or informal banking system are ERCs. ERCs must be:

Real — The emission reduction must be the result of a reduction in *actual* emission levels. Furthermore, the baseline from which emission reductions are measured must be the lower of a source's actual and allowable emissions.

Quantifiable — The emission reduction must be measurable or calculable through accepted procedures. The quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, process or production inputs, modelling, or other reasonable measurement practices. Generally, the same method must be used for quantifying emission levels before and after the emission reduction occurs.

temporary nature and must endure for the life of the new or modified source to which it is applied. EPA defines a 'permanent' emission reduction as one which is assured for the life of the corresponding increase, whether unlimited or limited in duration.

Enforceable — The emission reduction and its method of creation must be enforceable by the permitting agency and the EPA. Emission limits necessary to make the reduction enforceable must be incorporated into a compliance instrument which is legally binding and 'practically' enforceable.

Surplus — The emission reduction must go beyond the level of reduction required by applicable regulations and permit conditions and must not otherwise be required by the air quality attainment plan. In essence, there can be no 'double counting' of emission reductions.

As noted above, not every emission reduction can qualify for use as an offset. Likewise, not every source that creates ERCs can trade those reductions to every other source needing offsets. The restrictions that are placed on the creation and use of offsets greatly affect the way in which offset markets function. Regulatory restrictions and oversight properly inhibit the unrestricted trading of emission reductions. Thus, offset markets have very different characteristics than ordinary commodity markets.

Since 1976, emissions trading concepts have saved US companies hundreds of millions of dollars in unneeded compliance costs with no risk to the environment. As a result, many organisations have encouraged the increased use of marketable permit concepts. It was upon this base that the US acid deposition control programme was developed. Table 1 (p. 18) summarises the results of emissions trading from 1976 through 1993.

TABLE 1

A Summary of Emissions Trading Concepts and Outcomes

Name of Instrument	Estimated Number of Transactions	Estimated Number of External Transactions	Estimated Cost Savings	Environmental Quality Impact
Netting	5,000-12,000	none	$25-300 million in permitting costs and $500/ 12,000 million in emission control costs	insignificant in individual cases and probably insignificant in aggregate
Offsets	1,800	200	probably in the hundreds of millions of dollars	probably insignificant
Bubbles (approved by US EPA)	40	2	$300 million	insignificant
Bubbles (approved at the state level)	89	0	$135 million	insignificant
Banking	under 100	under 20	small	insignificant

Source: Foster and Hahn (1994)

Note: The cost savings presented above should be even larger since Foster and Hahn's data was from 1976-1993.

... and what endorsements by regulators and environmental groups suggest is that regulatory systems can be developed which foster the attainment of environmental goals, cost-effectively and rapidly, by using both economic carrots and regulatory sticks.

How did this happen? While several factors were responsible, the key to the success of each instrument was a regulatory regime that focused on:

1. attaining or maintaining environmental goals;
2. stringent review and approvals;
3. creating an audit trail so firms understand how many emission reductions they have to trade and how regulators and 'greens' could validate the authenticity of the transaction; and
4. the existence of enforcement and penalty policies with teeth.

Absent these criteria, many responsible firms sent the message to US EPA that they would shun these policies. Simultaneously, state regulators and environmental interest groups threatened to hold the implementation of these programmes hostage by protracted litigation and administrative foot-dragging until safeguards were built into the trading-oriented policies.

4. The US Acid Deposition Control Programme

Acid rain is created when SO_2 and NOx react in the atmosphere to form sulphuric and nitric acids. These acids then fall to the earth, sometimes hundreds of miles downwind from their sources, in wet form (rain or snow) or in dry form (small particles). Many US and international scientists have linked acid rain with damage to sensitive aquatic and forest ecosystems. The dominant precursor of acid rain in the United States is SO_2 from coal-fuelled power plants.

When the US Clean Air Act (CAA or Act) was re-authorised in 1990, it included a programme to control acid rain. Title IV of the 1990 Act limits electric utilities' emissions of SO_2 and NOx. Title IV created a regulatory regime to reduce the costs of meeting these emissions limits by allowing utilities to choose cost-effective pollution controls. Under Title IV, the US Congress combined emissions trading concepts with strict monitoring requirements to ensure that new SO_2 emissions limits will be met.

Title IV of the CAA imposes a nation-wide emissions cap. This cap was intended to reduce annual SO_2 emissions from utilities by an estimated 8.5 million tons from 1980 levels beginning 1 January 2000. This reduction is implemented in two phases. Phase I, beginning 1 January 1995, applies to the 110 highest-emitting utility plants and mandates that annual emissions be reduced by about 3.5 million tons. Phase II, beginning 1 January 2000, requires an additional annual reduction of about five million tons. Phase II applies to the Phase I plants and adds another 700 utility plants to the regulatory programme.

Under this programme, electric utilities receive emissions 'allowances' from EPA that allow the power company to emit SO_2 during a specified year. Each utility is allotted a specific number of allowances annually. At year's end, each must have one allowance for each ton of SO_2 emitted. To help utilities reduce their costs of complying with lower SO_2 limits, they are given flexibility to choose how they will meet the overall reduction requirements of Title IV. For example, they can switch to fuel with a lower sulphur content or install pollution control devices. They can also buy and sell SO_2 allowances. That is, if a utility's cost to reduce SO_2 emissions is higher than the market price of allowances, the utility can save money for itself and its customers by purchasing the necessary number of allowances to comply with the

allowances to be available, however, another utility generally must reduce emissions below its emission limit. Such a utility can sell its surplus allowances to other utilities with higher costs and earn a profit.

To assure the public of the integrity of the system, power plants must install continuous emissions monitors and regularly report their actual emissions to EPA. By capturing compliance data, EPA is able to identify non-complying facilities. If companies violate their emissions limits, firms forfeit allowances to cover the excess emissions and pay automatic fines set at several times the estimated average cost of compliance.

As part of the administrative procedures governing the acid deposition title of the Act, each utility had to file an air permit and compliance plan with EPA describing how it will meet its emissions limits. In Phase I, EPA was responsible for issuing permits and reviewing the utilities compliance plan. In Phase II, state or local agencies with EPA approved programmes issued permits and reviewed compliance plans. Permit applications and compliance plans for Phase I were due on 15 February 1993. Permits and compliance plans for Phase II were required by 1 January 1996. Utilities demonstrated compliance with decreasing SO_2 emission limits by purchasing allowances from other utilities, banking extra internally-created allowances for future use, switching from high-sulphur coal to low-sulphur coal or natural gas, installing scrubbers, shifting some electricity production from dirtier plants to cleaner ones and encouraging more efficient electricity use by customers.

Given the programme's design - continuous emission monitors, high penalties and a strong permitting system - Title IV virtually ensures that the desired amount of emissions reductions will occur, whether or not the emissions trading system functions as expected.

Experience with Title IV has been very good. Compliance costs have been less than expected and reductions in SO_2 have been achieved.

Reviews by environmental organisations, academics, the US Office of Technology Assessment, and the US Government Accounting Office confirm that EPA has been successful in administering an environmentally rigorous and cost-effective system to achieve emission reductions.

The experience with the SO_2 allowance trading programme, as with the US emissions trading programme, suggests that some programme features could be effective components in a trading programme to reduce CO_2 emissions. For example, the SO_2 trading programme ensures environmental protection by mandating an overall reduction in emissions, tracking compliance with emission monitors and imposing high enough penalties to deter non-compliance. A CO_2 programme could be designed to include these features.

Under the two-phased approach of the SO_2 programme, institutions were established within industry that make further reductions less costly than industry ever imagined and much less expensive than the inflated numbers tossed at legislators to forestall any legislation.

The SO_2 trading programme has built-in safeguards to ensure that environmental protection is achieved regardless of how much or how little allowance trading occurs. These same features could serve as environmental safeguards in a CO_2 trading programme. For example, stipulating a fixed amount of emissions to be reduced nation-wide by a specific date could help to make it clear that environmental protection is the primary goal of a CO_2 trading programme. In addition, separating the overriding environmental objective from the means of achieving it helps address concerns about whether trading will ensure that environmental goals are met.

While there are people who advocate self-enforcement, the ability to continuously monitor emissions and share this data with regulators has both environmental and economic benefits that facilitate trading. This information makes it easier for utilities to make sure they are complying with the law and for EPA and state regulators to detect non-compliance (in terms of statistics, such systems minimise Type I and Type II errors, and provide a benefit to regulators and the regulated). Finally, it is also true that, together with good compliance monitoring systems, large penalties can deter non-compliance.

The financial outcomes that derive from the allowance trading programme are straight-forward as the tables below illustrate: Table 2 (p. 23) presents some forecasts, while Table 3 (p. 24) presents data on outcomes. Projections for SO_2 allowance prices were much higher than actual costs. Industry oriented projections were the highest. Instead of allowances costing hundreds of dollars per ton, as predicted, in early 1996

the most cost-effective control strategies and hence to lower-cost SO_2 allowances.

TABLE 2

Summary of SO_2 Allowance Price Projections

NAME	Middle Prices Phase I	Middle Prices Phase II
Labour union: United Mine Workers	981	-
Ohio Coal Development Office Consultancy	785	981
Trade association: EPRI	688	-
AER*X: industry opinion survey in 1990	453	542
Coal-based electric utility: AEP	392	589
Consultancy: RDI	309	374
Coal-based electric utility: Allegheny Power	302	807
Consultancy: EVA	202	605
Consultancy: ICF-1	185	472
Consultancy: ICF-2	118	318

Note: From Hahn and May, *The Electricity Journal*, March 1994.
Some 'middle' prices are the average of the projected low and high case scenarios.

TABLE 3

Recent SO_2 Allowance Price Indices

SO_2 allowance index	Sept. 1995	Oct. 1995	Nov. 1995	Dec. 1995	Jan. 1996	Feb. 1996	March 1996
Emissions Exchange (published exchange value)	127	125	119	105	92	74	69
Clean Air Compliance Emission Allowance Trading Index	128	128	120	111	98	81	

Note: From *Clean Air Compliance*, 26 March 1996.

The US Government Accounting Office's (GAO) assessment of the allowance trading programme concluded that EPA's acid rain programme will save billions of dollars a year over traditional approaches to pollution control and that there is no evidence of negative environmental impacts. In fact, the GAO concluded that the programme would save about $4.5 billion dollars a year thus representing a saving of more than two-thirds of the cost of a command-and-control approach. With allowance prices in free fall, even this number may be conservative. The SO_2 allowance trading programme worked considerably better than even its advocates expected it to.

Joint implementation (JI) refers to those activities which countries jointly develop to mitigate greenhouse gases. The concept permits one country to over-control emissions or create greater carbon absorption capacity and trade these carbon reductions to a second country. The concept is almost identical to the concepts underlying emission credit trading and SO_2 allowance trading. The specific legal mechanism for establishing a JI system is based on two processes being established: one deals with a system of emission rights (an accepted emissions cap) and the second is a system of obligations in which the extra-fulfilment in one country can be substituted for an obligation in another country.

One reason for a JI transaction is that one country faces high-cost emission reductions while another has many low-cost emission reduction opportunities. Other countries and companies might participate in JI transactions to curry favour with politicians or green organisations, or because of an ambiguous commitment to good corporate citizenry. Whatever the reasons that partners trade, it is self-evident that both parties view the transaction as beneficial.

While trading of reductions may not be in the exact language of the implementing international agreements, the 1992 UN Framework Convention on Climate Change (FCCC) does allow the possibility of JI between Parties to the convention. Unfortunately, the legal and institutional settings for JI transition were left undecided until March 1995 at COP I in Berlin. Though COP I only led to the adoption of rules governing a pilot phase (AIJ), the identification, cultivation, design, seeking of funding for, implementation and documentation of JI projects has grown from a cottage industry to an emerging business for NGOs and a few private sector entities playing the intermediary role. For a description of JI see Box 1 (page 63); for examples of two JI projects, see Boxes 2 and 3 (pages 64-65).

But what in fact is JI? Is it a wolf in sheep's garb or is it the harbinger of a more cost-effective greenhouse gas control programme and, therefore, an element of a comprehensive strategy which could lead to politically acceptable limits on greenhouse gas emissions?

The history of emissions trading in the United States is instructive in this respect. Emissions trading did not begin as a comprehensive system that describes the generation, certification, storage and use of ERCs. Emissions trading started out as just the Offset Policy. The Offset Policy was an administrative mechanism which allowed a company that was increasing emissions in a dirty-air area to secure emission decreases that more than offset their increases. The Offset Policy was not part of an integrated clean air act initiative but was a common-sense solution to the cost-ineffective consequences of a command-and-control-based Clean Air Act.

The Bubble Policy was another 'crediting' concept that aimed to reduce compliance costs while keeping emissions at the same or lower levels. The Bubble Policy applied to existing facilities and allowed a company to re-arrange its emissions control obligation at an existing facility and to do so in any way such that emissions would not increase. As a result, companies could save a lot of money by reducing emissions at low cost-of-control emission points in lieu of less stringent controls at high cost-of-control emission points.

Under both the Offset Policy and the Bubble Policy, companies would create an emission reduction below some baseline and apply that credit to an emission control obligation.

In relatively short order, however, it became apparent that these polices were really nothing more than marketable permit programmes and that the central issue in these programmes was the conditions under which emission reduction credits would be granted, certified, stored for subsequent use and then applied to some pollution control obligation. Once this was understood, the Offset Policy, the Bubble Policy and the concept of emissions banking all became subordinate to the development of a comprehensive air credit trading regime. The common currency of this regime became the ERC.

Just like the Offset and Bubble Policies, JI will probably metamorphose into a marketable permit programme. However, the evolution will require more time and more experience than was required under Emissions Trading.

In order for this JI-caterpillar to change into a marketable permit butterfly, many legal, administrative and technical issues must be resolved. Building the experience base and resolving some of these issues is supposed to be the subject of the AIJ

Obviously, a substantial amount of data exists upon which decisions could be made:

- thousands of NOx, SOx, CO and hydrocarbon trades have been conducted in many jurisdictions throughout the United States from 1976 through 1995;
- hundreds of studies of this data have been conducted by academics and international organisations which endorse the continued use of marketable permit-like programmes; and
- the replication of the economic incentive model to more and more applications has taken place throughout the OECD countries and the transitional economies.

Instead of looking at these impressive results and making regulatory decisions based on these data, valuable time is being lost while a new generation of governmental officials and NGOs experiment with JI and learn by doing instead of learning by reading. Instead of learning from practitioners who have been creating and trading emission credits, the world community is intent on re-inventing the regulatory wheel.

Today, Norway, the Netherlands, Germany, the United States, Costa Rica, Honduras, Belize, Bhutan, Hungary, Poland, the Czech Republic, Ecuador, Finland, Sweden, Japan, Iceland, Australia, Canada and Russia all support JI projects. While each country has its unique view of JI, it suffices to say that JI has substantial and powerful supporters.

6. The Netherlands' JI Programme

On 9 May 1992, the UN Framework Convention on Climate Change was adopted in New York and, one month later, 155 states signed the convention at a UN meeting in Rio de Janeiro. Currently, more than 165 states have signed the convention and over 140 have ratified it.

On 25 September 1995, the Netherlands Cabinet submitted its decision on JI to the Parliament. This policy document was preceded by a long process of consultation with advisory councils, industry, utilities and environmental NGOs. From this action, and from a long-standing interest in JI, has flowed a series of innovative and civic-minded JI projects that provide positive examples of how JI might work.

The Netherlands Cabinet decided that it will not use JI for its present commitments under the FCCC. The stabilisation of emissions of greenhouse gases in the Netherlands at 1990 levels by the year 2000 will be realised solely by domestic measures. Furthermore, the more strict Netherlands national policy objective of 3 per cent reduction of CO_2 emissions by 2000 compared with the 1990 level will also be realised by domestic measures such as increased energy efficiency. However, JI can be part of a strategy to meet subsequent commitments.

In the Cabinet's view, those who set up JI projects during the pilot phase or even before should be rewarded. For example, if these projects have long-lasting and positive effects on mitigating greenhouse gases and if the measures fit within formal FCCC criteria, then credit could be received for their remaining project lifetime after 2000. Such a provision is to encourage early JI activities.

To further promote JI, the Netherlands government has set up its own pilot phase programme which will last four years. This pilot phase programme aims at a broad range of projects and all greenhouse gases will be addressed, not only CO_2. Different sources, sink, and economic sectors will be investigated. In addition, the programme aims at projects in Central and Eastern Europe and in developing countries. In this way, experiences can be gathered with respect to issues such as additionality, cost-effectiveness of different types of projects, legal framework and monitoring requirements, technology transfer and transaction costs. An annual report on the progress of this programme will be sent to Parliament and to the FCCC.

phase. Therefore, the Netherlands Cabinet invited private companies to participate in the Netherlands pilot-phase programme and to propose suitable projects of government registration. However, recognising the absence of FCCC-based incentives, some Netherlands-based incentives have been included in the programme.

The Netherlands permits the formal registration of suitable projects and the certification of JI emission reductions or sequestration efforts. At an inter-ministerial level this system of registration and certification is now being worked out. The Netherlands Cabinet announced that Netherlands companies can use certified emission reduction or sequestration efforts as part of future agreements with the Netherlands government. For example, certificates could play a role in further Long-Term Voluntary Agreements on Energy Efficiency Improvement for the period after 2000. Recently, the Cabinet presented its third White Paper on Energy in which a more than 30 per cent efficiency improvement target was set for the period up to 2020. It is likely that JI-based reductions could be used to meet that target too.

To promote JI, the Cabinet decided to allot a special budget for support of JI projects in Central and Eastern Europe and also in developing countries. For the period 1997-1999, on an annual basis 12 million Netherlands guilders will be available for funding and leveraging JI projects in Central and Eastern European countries. Furthermore, in the period 1996-1999, also on an annual basis, 12 million Netherlands guilders are available for support of JI projects in developing countries.

The Cabinet decision allows for support of JI projects within the existing fiscal system of accelerated depreciation of environmentally-sound capital goods. Furthermore, a report will be prepared on whether or not the 'Green Stock Fund' investment scheme will be a suitable instrument to promote taxation and therefore gain increasing popular interest in the Netherlands.

Finally, the Cabinet also decided to continue its efforts for increasing support for the instrument of JI, both at national and at international levels. Also in the coming period, the Netherlands is prepared to contribute actively to support meetings which focus on dissemination of information on JI and intends to provide useful input to the FCCC process.

Registering projects under the Netherlands JI pilot phase programme will depend on fulfilling relevant criteria. The Netherlands will apply the following criteria which are based mainly upon the Berlin decision.

1. The most important criterion is of course that national governments involved should submit a Letter of Intent registering a project as being a JI pilot project.

2. JI pilot projects should lead to real emission reductions compared to a base-line situation. Monitoring requirements should be part of project proposals to ensure real, measurable and long-term environmental benefits to the mitigation of climate change.

3. JI pilot projects can deal with sources, sinks and reservoirs of all greenhouse gases which are not dealt with under the Montreal protocol.

4. Furthermore, JI pilot projects should be compatible with, and supportive of, national environment and development priorities and strategies of the host country; therefore, claimed environmental benefits of JI pilot projects will be scrutinised.

5. The project should entail, as far as possible, a training component for local authorities and companies in the host country; therefore, involvement of local partners is strongly encouraged.

6. Following the Berlin decision, the financing of JI pilot projects shall be additional to the financial obligations of Annex I Parties.

7. In selecting projects, a broad range of projects will be sought out, including geographical distribution and various types of technology.

combined effort of several ministries. Therefore, close inter-departmental co-ordination is foreseen.

First, the Ministry of Environment is strongly involved. It is developing a system for registering projects and certifying results. Furthermore, the Ministry of Environment will be responsible for compiling an annual report on the progress of the Netherlands pilot phase. This report will be sent to Parliament and the Conference of the Parties. The ministry will annually certify the results of the project towards participants. These can be companies, governmental organisations or NGOs. Finally, the ministry will be responsible for initiating further research projects, communication like the Joint Implementation Quarterly of the Foundation Joint Implementation Network and funding conferences and workshops. Some of these tasks will actually be performed by an external agency, a so-called JI Service Centre. The centre will be set up to provide the necessary logistical support for the ministries involved for the period until 1999.

Also the Ministry of Economic Affairs, which has the main responsibility for the Netherlands' bilateral support programmes for Central and Eastern European countries, will participate along with the Ministry of Foreign Affairs, which has the main responsibility for the assistance programmes for developing countries. Identification, selection, financing and monitoring of project results will be the main responsibility of the Ministry of Foreign Affairs.

In respect of JI projects now endorsed by the Netherlands, there are many ongoing activities. The geographical distribution of these projects is quite balanced with three projects focusing on sequestration via afforestation, while the other projects deal with emission reductions, both carbon dioxide and methane. All projects are based on a mutual written agreement between the hosting government and the Netherlands government. They range from large projects like forestry, aimed at reforesting about 150,000 hectares in the coming 25 years, to two small projects in the Russian Federation and Hungary.

The Netherlands has been at the forefront of developing JI concepts and projects. In all respects it has been, with Norway, among the leaders in Europe in advocating JI as a complement to the FCCC.

7. A Description of the US Initiative on Joint Implementation

In October 1993, the United States announced the US Initiative on Joint Implementation (USIJI). The USIJI is a voluntary pilot programme that was to contribute to the international knowledge base by promoting projects that reduce greenhouse gas emissions in different geographic regions. Draft rules for the USIJI were published for public comment in December 1993 and the final rules were published in June 1994. These rules established an Evaluation Panel to decide which proposed projects qualify for USIJI status. The rules also describe how to prepare and submit a project proposal for consideration by the Evaluation Panel.

The purpose of the USIJI pilot programme is to encourage the development and implementation of co-operative, voluntary, cost-effective projects between US and foreign partners. It aims at reducing or sequestering emissions of greenhouse gases, particularly through projects which promote technology, co-operation and sustainable development in developing countries and countries with economies in transition to market economies.

The USIJI programme was also to promote a broad range of projects to test and evaluate methodologies for measuring, tracking and verifying costs and benefits. The programme was to:

- establish an empirical basis to contribute to the formulation of international criteria for JI;

- encourage private sector investment and innovation in the development and dissemination of technologies for reducing or sequestering emissions of greenhouse gases; and

programmes, including national inventories, baselines, policies, and measures, and appropriate specific commitments.

The programme is run by an Inter-agency Work Group and an Evaluation Panel. The Inter-agency Work Group is responsible for overall policy development on JI. The Evaluation Panel is an independent technical review body composed of representatives from US federal agencies - the Department of Energy, Environmental Protection Agency, Agency for International Development, Department of Agriculture, Department of Commerce, Department of the Interior, Department of State and Department of the Treasury. The Evaluation Panel makes final decisions on whether projects qualify for USIJI status. The Evaluation Panel also has the discretion to approve operational protocols and methodologies, and preliminary evaluation criteria. The Evaluation Panel started to accept JI proposals in 1994. Accepted projects receive certificates of recognition and further instructions for reporting under the programme.

Eligibility requirements are simple. Any US citizen or resident alien is eligible to participate in the USIJI process. So too is any company, organisation or entity incorporated under, or recognised by, the laws of the United States. Other organisations such as any US federal, state or local government entity can participate in USIJI projects. Foreign partners can include any country that has signed, ratified or acceded to the United Nations Framework Convention on Climate Change and any citizen or resident alien of a country identified above. Any company, organisation or entity incorporated under, or recognised by, the laws of a country identified above, or any national, provincial, state or local government entity of a country identified above can also participate.

But what are the benefits of the USIJI pilot programme? The government's marketing materials (see Box 4, page 66) claim that there are many benefits, including:

- input to development of international criteria for JI;
- public recognition;

- access to technical assistance;
- local economic benefits; and
- global benefits.

However, hard-nosed business people are likely to look for more substantial reasons to invest in JI. This is especially true in the United States where the electric utility industry is currently re-structuring. While re-structuring is not an exact synonym for down-sizing or consolidation, the implication for JI is that projects must now produce much more than photo opportunities for CEOs and tossed-bones to environmental organisations. It is hard to calculate the nominal value to firms and CEOs of so-called 'global benefits', 'public recognition' and tangential participation in the global warming debate; but these benefits are unlikely to exceed the many thousands of dollars and staff time required to develop a JI project. Furthermore, because of agreements reached in Berlin in 1994, JI credit against any post-2000 carbon liability is not possible. The net result is that until more substantial benefits are provided, it is unlikely that JI will develop more fully and AIJ, as currently constructed, will look more and more like government aid and less like the actual private sector focused programme it was intended to become.

Yet, it should be pointed out that there will continue to be at least tepid private sector interest in AIJ, to the extent that companies still believe that credit will be given against post-2000 emission reduction targets even though the Berlin agreements moot this opportunity. Such wishful thinking on the part of some that the US government will somehow recognise USIJI projects in the post-2000 carbon-reduction era is not entirely misplaced. In opposition to years of pronouncements to the contrary, the US EPA has recently developed a regulatory programme that grants credit for pollution reductions that have occurred before there were regulatory baselines, monitoring and agreed-upon measurements protocols. While such actions are unambiguously un-environmental, they illustrate why some companies believe that the US EPA can be convinced to give credit for actions which they previously agreed are non-creditable. Virtually all environmental groups, most industries and the author oppose such actions, which inevitably undermine the integrity of any regulatory programme.

countries in various regions of the world, which are designed to facilitate the development of JI projects. These Statements of Intent provide a framework for governments to co-operate to promote private sector investment in projects which, according to the rhetoric, fuel economic growth and produce environmental improvements.

The first agreement signed was a Joint Statement of Intent between the US Department of Energy and the Environment and Urban Affairs Division of the Islamic Republic of Pakistan.

The second agreement was with the Government of Costa Rica. The agreement was signed by Vice President Al Gore and Costa Rican President Jose Maria Figures. It emphasised energy efficiency and renewable energy technologies, sustainable forest management, expanded information, and education and training. The agreement also encouraged the Governments to seek innovative financial arrangements to increase private sector investment, to develop new kinds of partnerships, and to provide needed incentives to promote JI. This agreement became a model for other agreements between the US and the seven Central American countries.

In October 1995, an Annex to the original Statement of Intent was signed. This Annex called for both parties to explore ways to reduce transaction costs associated with developing JI projects.

In March 1995, the US Department of Energy signed a Statement of Intent with the Chilean National Energy Commission and in June 1995, officials from the US, Costa Rica, Nicaragua, Guatemala, Honduras, El Salvador and Belize signed the first regional international agreement to co-operate on joint implementation.

In October 1995, an agreement was signed by the US and the Government of Bolivia. This agreement, like all the others, is quite formal. The agreement is summarised in Box 5 (page 67) to give the reader a flavour of the contents of these agreements that enable JI projects to take place.

In December 1995, the United States Department of Energy announced the selection and endorsement of eight JI projects to be USIJI projects. The eight projects were selected from among 21 proposals submitted to the US Government. The

projects will employ geothermal, biomass, hydroelectric, wind energy technologies and forest management practices in Costa Rica, Honduras. Nicaragua and Russia.

The announcement was made with considerable fanfare. US Under Secretary of State for Global Affairs Tim Wirth announced the winning projects along with the Deputy Secretary of Energy, the Agency for International Development Assistant Administrator, the Chairperson of the Council of Environmental Quality and diplomats from the countries where the projects will take place. Every effort was made to squeeze the maximum public relations juice out of these announcements. Yet, while the projects represent private sector investments that could top $200 million when they are fully implemented, to date little has happened that actually reduces carbon emissions.

The winning projects were:

1. Costa Rica: Klinki Forestry Project

Over the next six years, over 6,000 hectares of Costa Rican pasture will be transformed into forest. The Klinki Pine, a tree from Papua New Guinea, will be mixed with native species to produce durable forest projects to make reforestation economically viable. The participants are the Cantonal Agricultural Center of Turrialba and the US Newton Trevso Corporation.

2. Costa Rica: Aeroenergia Wind Facility Project

The Costa Rican national utility company will purchase 6.4 megawatts generated by wind turbines. Participants are Power Systems Inc., Aeroenergia SA and Energy Works. The projects should reduce CO_2 emissions by an estimated 36,000 tons in four years.

3. Costa Rica: BIODIVERSIFIX Forest Restoration Project

The Guanacaste Conservation Area (GCA) in Costa Rica will restore 54,000 hectares of dry forest and 1,500 hectares of wet forest. The production of fine hardwoods. possible water purification, eco-tourism, biodiversity conservation, and prospecting for natural genes and chemicals will be the economic basis for the sustainable use of these forests. Along with the GCA,

participate.

4. Costa Rica: Dona Julia Hydroelectric Project

The project will construct a 16 MW hydroelectric plant in northern Costa Rica, replacing facilities that burn fossil fuels. The project will displace 30 MW thermal units burning high-sulphur diesel fuel, bunker and other heavy fuel oils. During the first five years of operation, the hydroelectric plant is estimated to produce a net carbon reduction of 314,000 metric tons of CO_2.

5. Costa Rica: Tieras Morenas Windfarm Project

The same participants as in the Dona Julia hydroelectric project are also involved in a wind farm that can generate 98 gigawatt-hours annually. By displacing 30 MW thermal units, 100,000 tons of CO_2 emissions per year will be mitigated.

6. Nicaragua: El Hoyo Monte Galan Geothermal Project

This project involves the construction of a 50 megawatt power plant, on line in mid 1999, to be expanded to 105 megawatts within two years. Energy is obtained from hot water brought from a reservoir by deep wells. The project decreases the emission of global heating agents, as well as Nicaragua's dependence on fossil fuels. Participants are C&R Inc. from Managua, Nicaragua, and the Trans-Pacific Geothermal Corporation from the United States.

7. Honduras: Bio-Gen Biomass Power Project

The Honduran Bio-Gen Corporation will develop a 15 MW waste-to-energy plant near a forest products processing region in Guaimaca, Honduras. Long-term contracts for both input and output guarantee have been signed, ensuring a stable economic environment. Prevented emissions of CO_2 amount to at least 113,500 tons annually. Other participants include the Nations Energy

Corporation, International Utility Efficiency Partnership (IUEP), and Add-On-Energy 1, all from the United States.

8. Russian Federation: RUSAGAS Fugitive Gas Capture Project

The leaking of methane from the natural gas production and transmission system in the Russian Federation will be checked substantially at two compressor stations, improving operational efficiency in the process. Participants include GAZPROM in the Russian Federation, Oregon State University, and several organisations that will assess the effect of the project on total GHG emissions.

An earlier round of seven USIJI projects were selected in February 1995. The first seven represented more than $40 million in private investment, supporting projects located in Belize, Costa Rica, Honduras, the Czech Republic and Russia.

The above projects make clear that there are two business sides to the JI story and this means there are at least two distinct business positions on JI. One position is from the perspective of the company that must create carbon reductions, with carbon mitigation seen as a cost item. A second perspective is that of the provider of products and services that reduce carbon emissions.

As far as JI is concerned, both types of business actually want the same thing - reductions that are real, low-cost, transferable and able to meet regulatory muster. They want a regulatory system that supports JI that is simple, certain and easy to understand.

But what kind of system provides the best JI outcomes? To answer these questions we must first put JI into its proper business paradigm - a project financing paradigm.

JI projects are large investments. JI projects will be initiated by large companies since small companies will probably not be caught in any carbon regulatory net. JI activities will be long-term investments. JI projects will be initiated outside of the OECD countries and, hence, will suffer from the usual political, currency, and implementation risks that surround other investments in developing and transitional economies. So the tools that are used to assess other investments should also be used to assess the viability of JI projects.

only be justified if the returns are also large. The little projects we have seen so far would be uninteresting as investments - they are too small, too risky and the returns are unknown and. hence. are un-hedgeable. Project financing is interesting because the risks and uncertainties involved in balance-sheet financing may not be tolerated for large JI investments - even large companies. It is one thing to play with 'free money' from multi-national donors or foundations, or use the 'soft money' that is chasing green-PR; it is quite another thing to be putting conventional sources of capital in an investment that must compete against other large investments for funds. It makes sense, therefore, to look to the experience of project financiers to identify the elements of successful projects and to understand the circumstances in which successful projects can be developed.

When a business person considers a project-financed investment, that business person insists on a single source of repayment, a strong cash flow (or its equivalent), limited recourse to the project's sponsors, and risks that are shared among all the participants in the project.

There are a number of reasons why project financing is employed and all of these reasons apply to JI. First of all. it is a well-established and successful lending methodology. Secondly. it results in the lowest, most predictable flow of funds.

Project financing is also used because it is a discipline that isolates risks. Due to the detailed structuring involved and the exhaustive due diligence conducted by all participants. project finance enforces a discipline on the borrower and the lenders. As a result all participants, especially the host country and the purchaser, will understand better their risks and rewards. Project finance also provides the flexibility to develop unique solutions for very specific risks. and for JI projects this feature could be very important.

Also there are a number of benefits associated with the participants. Typically, the sponsors are well-known to the lender from their activities elsewhere in the world. Only sponsors with an established and successful track record are able to borrow. Lenders benefit by having a strong. local ally who has even more incentive to see the debt repaid. The project's sponsors represent a first line of defence against the costs

and aggravations of pursuing remedies for non-performance (and for serious JI projects, as opposed to AIJ projects, non-performance is an important business risk).

Finally, there are also a number of structural benefits associated with project financing. There is an allocation of risk to the party most capable of controlling it. A basic premise of project financing is minimising the economic volatility of the transaction through contractual structuring. This includes structural protections covering changes of legislation, regulation, government intervention and currency exchange.

JI projects are like most energy projects: they are very long-term investments and they will not attract fast-buck money. Project-financed activities are structured to streamline the judicial process and minimise the reliance on courts. This is done through established performance standards and penalties formulated as liquidated damages, which are back-stopped by performance bonds or guarantees, or other liquid elements.

Lenders are also fully secured by physical assets, the assignment of all contracts, land rights, permits and even the project company's bank accounts. The lender's engineers control the disbursements of all funds for the intended purposes and in accordance with prearranged schedules and an itemised budget. There is also a debt service reserve fund created from the partners' dividends, usually covering six months of principal and interest for additional liquidity during the operating phase.

By employing a project-financing approach, JI projects can be economically enhanced by limiting the creation of a lump sum turnkey contract, proper structuring of operations and maintenance costs, and minimising debt service. Returns (earnings plus applicable carbon reductions) should not fluctuate with shifting interest rates, currency devaluations, or regulatory circumstances.

Clearly, project financing has many good attributes. But for JI to secure these benefits there must be a fertile legal, administrative and regulatory framework. Although it is not necessary for a country to be investment grade for a JI project to be developed, there are good economic reasons to improve the business and institutional

application of the project finance methodology for JI include:

- develop an inter-ministerial consensus and exhibit strong government support for both the proposed JI project and the legal and financial structure;

- Clarify all applicable laws and regulations;

- Enhance lender collateral and foreclosure rights (this is a worrisome matter when we are talking about a JI project);

- Since these are secured transactions, modern systems to assess pre-existing liens and perfect new liens must be established;

- Develop legal policies to ensure the sanctity of contracts and the enforcement of international judgements; and

- Finally, it is important to improve laws concerning due process for foreign equity and debt investors.

Clearly, the proper paradigm for viewing JI projects is the project-financing paradigm and this is a model that many business people know quite well. One must recognise that this model may be quite off-putting to the larger NGO community which has heretofore been sponsors of many JI projects. Nevertheless, project-financed JI activities will represent a large percentage of future JI projects.

There is currently little useful information available on JI projects other than the public relations materials put out by most JI sponsors and national governments. To many people, the cost data looks suspiciously low. To others, there are real questions as to the environmental benefits associated with JI projects. To still others, there are questions as to the hidden costs associated with JI and imposed upon national regulators. Only through a thorough evaluation of JI and AIJ projects can potential generators of AIJ projects and potential purchasers of post-2000 JI projects understand what, if anything, JI offers them.

New ideas typically must meet higher standards than the status quo. Therefore, advocates for change, and especially advocates for market-based environmental programmes, should consider building in or adding on to their reforms an evaluation component. Properly done, an evaluation system provides assurances for sceptics that, even under the worst case scenario, the reform will not cause bad outcomes. The evaluation system can provide both real-time data, so mid-course corrections can be made, and periodic outputs so political leaders can point to interim successes.

Despite the obvious need for an effective evaluation system, most regulatory programmes are administered without a systematic measurement of their performance. As a result, evaluation is typically anecdotal and often based on incorrect or simply meaningless evaluation criteria. Moreover, the periodic reports that are called 'evaluations' are frequently late or do not meet the needs of decision-makers.

Absent a rigorous evaluation programme, conclusions regarding the performance of regulatory programmes are either intuitive or founded on political grounds. On many occasions, support for these conclusions is marshalled from ad hoc analyses cobbled from convenient data and anecdotes. Major conclusions, therefore, tend to reinforce conventional wisdom or merely serve political needs. Yet, while there is agreement that long-term effectiveness of regulatory programmes depend on integrating evaluation into their design and operation, few policies or programmes ever do get formally evaluated or have developed companion evaluations systems.

Evaluation is especially important when it comes to introducing a market-based regulatory programme. This is not only true because the status quo is such a vicious

competition against new ideas, but also because there is usually only the smallest constituency for a non-traditional approach to regulation. Lack of knowledge impedes the expansion of the reform and, despite the evidence, legislators, policy-makers and other stakeholders may be wary of expanding the use of economic instruments for which there are only undocumented theoretical linkages to environmental improvements. Evaluation can be used to document the use of economic instruments, thereby enhancing their credibility with stakeholders and contributing to decision-making. It can also point out discrepancies between ideal and actual performances, adding weight to the credibility of the instruments.

Evaluation is basically a comparison of expectations against outcomes. One form of evaluation is a snapshot of what happened. It is a look back at outcomes measured against predetermined standards. A second evaluation model is that of real-time feedback systems that provide both periodic snapshots and opportunities for making mid-course corrections.

While most people are familiar with the simple snapshot evaluation, serious businessmen and policy-makers are committed to the latter. By establishing measures for success and by collecting data on progress toward, and deviations from, success, serious managers are able to correct deficiencies and reinforce progress.

As noted above, JI is being tested through an experimental programme called AIJ. AIJ is voluntary and, under almost any imaginable circumstance, JI will be voluntary. There has never been any discussion of mandating trades nor does such a system make sense. Therefore, it is safe to assume that companies or countries will only become involved if those activities are mutually beneficial.

An interesting question, then, is how should the AIJ programme and previous JI project be evaluated? Since JI has been advocated to promote cost-effectiveness in the underlying environmental programme, the only criteria that it makes sense to use are environmental and non-financial external costs, such as the costs on the part of regulators to administer a JI programme. Of course, regulators and environmentalists would want to learn if goal-attainment was promoted, inhibited or thwarted. Observers would also be interested in hidden costs, administrative costs and any non-financial external effects.

Any JI project should result in reductions that are real, surplus, permanent (or duration specific), quantifiable and enforceable. These are the central tests of a good JI project. It follows that any JI programme should systematically produce good projects.

How, then, should we assess whether or not a project meets the above standards or a programme generates good projects? Furthermore, are these standards that are on a continuum - bad, poor, fair, good and excellent - or are these integer standards - either you pass or fail? In either case, some standard must be established and a process must be created that produces an audit trail so an independent third party can verify outcomes, and outcomes can be compared against expectations.

Evaluation activities look simultaneously backward and forward. By understanding how JI has interfaced with existing legal, regulatory and economic systems, we can better decide how JI should be used and how JI policies and programmes should account for prospective legal, regulatory and technical changes.

There is much scepticism about economic incentive programmes such as JI. While there is ample evidence to counter this scepticism, adversaries of market-based environmental policies are, at a minimum, concerned about adverse unintended consequences resulting from market-based environmental programmes. Evaluation counters this scepticism by objectively measuring the attainment of goals and by encouraging a results-oriented administration in contrast to a process-oriented administration. A business and regulatory-oriented evaluation could play an important role in the attainment of greenhouse gas control and help realise the benefits that economic instruments promise, such as less intrusiveness and greater efficiency.

There is resistance to JI for many reasons. For example, some opposition comes from regulators who see their current roles being jeopardised. Experience has shown that economic programmes can undermine older regulatory agencies using command-and-control regulation. This is because the economic incentive programme initiates activities that are either in conflict with, or oblique to, traditional command-and-control programmes. The governance strategy of economic instruments is so fundamentally different from that of command-and-control that the former can easily impose changes on the status quo.

occur under a full-blown JI programme, measuring the attributes of the marketable permits and rules governing their transfer becomes more important than engineering rule writing. Old, and formerly high-valued skills like engineering skills, become replaced by management information systems skills.

Resistance to the development of the marketable permit programme can come from those inside the implementing agency who represent the 'ancient regime' while the institutional beneficiaries have yet to form coalitions inside or across regulatory agencies.

Yet in spite of their self-serving concerns, most regulators support the use of economic tools like JI. During 1993 and 1994, the United States National Academy of Public Administration (NAPA) conducted a comprehensive study investigating the administration of economic instruments in the United States and Russia. The Advisory Board for the NAPA study included many former US EPA leaders and respected state and federal environmental professionals. The study concluded with a strong endorsement for both economic instruments like JI and the use of evaluation tools in the design and operation of such systems.

NAPA assigned a variety of benefits to evaluation:

- Evaluation provides data essential to changing the knowledge, attitudes and behaviour of those implementing economic instruments.

- Evaluation programmes are strongest when they stipulate in advance clear-cut objectives, responsible activities and measures for their implementation and their expected effects.

- Evaluation activities focus attention on results.

- An effective evaluation programme is concurrent rather than projective.

- Evaluation must be systematic and continual in the programme, not ad hoc.

- Creating empirical data and providing the data electronically to the public are fundamental to evaluating economic instruments.

- In designing evaluation of the administration/implementation of economic instruments, it is particularly important to understand and address the expectations of diverse stakeholders.

- Individual perceptions, a key factor in the emergence of markets, must be assessed regularly during implementation.

- As measures of outcomes are formulated, stakeholders and others must be educated about the time-frame for outcomes so that they do not become sceptical when results do not emerge instantly.

- Evaluation must be tailored to the specific conditions and expectations in the setting in which the economic instrument operates.

- Institutional support for evaluation must be developed.

- Implementation of economic instruments must be actively managed so that they may be sustained successfully in the face of dynamic economic conditions.

- Evaluation of incentives should be accompanied by a broad understanding of the political context in which economic incentive programmes are enacted or changed.

These rules are especially instructive for those supportive or antagonistic toward JI. Properly done, a quick evaluation is critical to obtain and maintain industries' support, acquire environmentalists 'support, justify regulators' support for JI, and provide feedback for those developing a post-2000 regulatory regime for carbon.

2000 JI. from core developed countries to less developed regulatory circumstances.

9. What Should the Evaluation Look Like?

The population of JI and AIJ projects is relatively small. Therefore, conducting the evaluation should be straightforward. Since evaluation is nothing but the comparison of expectations against outcomes, the first step is to identify expectations. The expectations should be set forth clearly, measures should be identified for each criterion, and a process must be established for the collection, verification, organisation and analysis of data.

The most important step in this process is the establishment of the evaluation criteria and measures for success. Consider the problems associated when early evaluations were done of US EPA's Offset and Bubble Policies. The Offset Policy was never intended to be an air quality attainment measure; it was developed only as a maintenance strategy and as a tool for siting new sources of emissions in dirty-air areas. Yet many people stated that the Offset Policy had failed because many dirty-air areas were failing to attain ambient air quality standards. Likewise, the SO_2 allowance trading system was assailed early on because SO_2 allowance prices were perceived to be too low. This accusation is particularly vexing, since the accusers imply that they know better than the market participants what the market price for a commodity should be. Moreover, low SO_2 allowance prices would actually be a sign of success, since the system was generating SO_2 reductions for less than everyone expected. Obtaining agreement on the goals of JI will generate much of the evaluation criteria and from that step flows the rest of the evaluation activities.

To affect ongoing negotiations, the evaluation should be in a draft form by February 1997 and, hopefully, a final report would be distributed by April 1997. The draft evaluation report should be circulated for comments to participants in the Conference of Parties and revisions made or exceptions noted to the conclusions by the April 1997 completion date. This process would allow for wide dissemination of the final report before the Conference of Parties meeting in Japan during the autumn of 1997.

The evaluation document should: amount to less than 100 pages (excluding appendices); re-state the evaluation criteria and how the criteria was established; explain how data was collected; describe the process by which the evaluation was

one to two page description of every JI and AIJ project and a similar description of groups of JI projects that are seeking funding. A standard format should be used to collect, organise, analyse, and display data. To the extent possible, common assumptions should be employed in the analysis.

Of course, all of the above are just mechanics. Getting agreement and an audience and a consensus of expectations is difficult. And that is where business and the regulatory community add value. For at the end of the day, it will be national regulators that will develop the rules governing JI and it is business that must be sold on investing in JI projects. That is why getting business and local regulators involved during the take-off will ensure a good regulatory landing.

It seems an almost inescapable fact that JI will be part of an international programme to limit greenhouse gas emissions. Absent JI, the cost of a rigorous programme may be prohibitive for all but the richest or least affected countries. Some developing countries see JI as a source of funds and influence and others see JI as a way to develop infant industries such as eco-tourism, sustainable forest management, and energy efficiency industries, all important activities which have the secondary benefit of capturing other emission reductions. Still other countries see JI as a cost-effective way to protect the world for the benefit of future generations.

Beyond these public-policy reasons lies the simple fact that thousands of energy business people who previously were sceptical about using the market to achieve environmental goals now support JI because of the simplicity and demonstrated cost-effectiveness of similar programmes. The consequence is that there is a large, vocal and politically influential group of energy and environmental professionals within many OECD countries who are familiar with JI-like concepts. These industry advocates have joined an unofficial (but nevertheless noticeable) alliance with market-oriented regulators, some environmental groups, economists and many policy analysts who, collectively, see the rebuttable presumption to be: 'JI should be part of the new regulatory regime' instead of 'should JI be part of the new regulatory regime?'.

The question, therefore, is not 'if' but how JI will be shaped. To date, industry has been on the sidelines while AIJ projects have been developed by NGOs and only a small group of industrial advocates. Yet the distribution of companies to be affected by new regulation is quite broad. Hence, industry should better understand the opportunities and costs that such a regulatory programme might produce. It is not just the coal-burning power plants that will be affected, it will be virtually all of industry; and just like with every important change, there will be economic winners and losers.

A climate change treaty will create a variety of winners and losers. The winners will generally be those companies that provide cost-effective and administratively simple solutions that fit within the new regulatory framework.

Winners will also anticipate what will happen once the climate change treaty is approved so their products and services will be tuned to the regulatory-driven needs of customers.

The exact response of complying companies will depend on the regulatory targets, timetables for compliance and the flexibility in the programme. The response by companies will differ because the magnitude of their control responsibilities differs. For example, large multi-national companies will, no doubt, conduct a world-wide audit of their greenhouse gas control obligations and commence the development of facility level carbon control strategies, and then build up their strategy to the national and international level. This 'planning response' was what derived from the US acid deposition control programme and it is logical that other multi-billion pound companies that must comply with a carbon-reducing regulatory regime will first assess the scope of the compliance problem and then plan a response before embarking on a multi-million pound compliance programme.

Compliance strategies to be investigated are likely to range from fuel-switching and transportation control measures to the generation and use of carbon reductions credit trading and mandatory technology solutions.

For large organisations, a control strategy will be developed that governs many decisions to be made over the next 10-15 years. Of course, some flexibility will be built into the system, but large companies will not want their regulatory fate to be in anyone's hands but their own.

This means that the world-wide demand for engineering, financial and business consultants will increase for the first three or four years of the programme. After that, industry will have developed the human capital and systems to manage their compliance response. Once the initial analysis of carbon mitigation options has been

so companies can fine-tune their control strategy.

Establishing this infra-structure of industry staff who are responsible for identifying and developing company-wide carbon control strategies, is a fixed cost. This cost varies very little if mandated carbon reductions are small, modest or large. Since the sooner these people are employed and empowered, the sooner and the lower will be compliance costs, developing these experts should be a near-term goal of both industry and regulators.

It has been argued that the position of companies which want JI-based reductions in carbon emissions is similar to the position of companies whose products and services provide JI-based carbon reductions. They both want a JI programme to be simple, non-intrusive, certain and conducive to risk-management. Using these attributes, and understanding the needs of regulators to assure good environmental outcomes, it is concluded, therefore, that from a business person's perspective JI must have the following attributes.

1. A 'Gold Standard' - The Common Currency must have Integrity

Any traded reduction under a JI programme must be real, surplus, measurable, auditable and certifiable as measured under internationally accepted standards. Otherwise, JI reductions will be suspect and non-transferable to other parties once created and transferred to the first party. Just as the adage states: 'One rotten apple spoils the barrel.'

Any defective JI reduction will discredit the entire system in the eyes of the regulator, the environmental NGO and the public, resulting in the abandonment of the JI programme.

2. A System for Managing Risks for Industry and Regulators

The integrity of the JI programme must be established from the outset and maintained throughout the life of the programme. Therefore, JI should be implemented in a step-by-step fashion: first with countries that share common legal, financial and environmental programmes of similar integrity; then including other countries that meet the same level of integrity. The programme's credibility must be earned by the emergence of a pan-national system of equivalent integrity, based on similar (if not identical) measurement systems, and supported by comparable legal and administrative systems. While moving hardware across countries and cultures is not always easy, transferring or developing equivalent legal and administrative systems is very difficult. Since developing comparable systems requires time and vast experience, these systems should be first implemented in countries that have relatively

economies before attempting to develop a multi-cultural, multi-country and multi-problemed JI programme.

Consistent with the concept of a rolling-JI programme, there should also be a rolling schedule for the application of different types of JI projects within the realm of tradable JI-based reductions. For example, certain kinds of projects become eligible for JI accreditation in years 1 and 2 of the programme while other kinds of projects become accredited in years 3 and 4, and still other projects are not accredited until years 5 and 6.

TABLE 4

How JI might Evolve in Nordic Countries

Countries	Repowering for credit beginning in year 1	Supply-side energy efficiency for JI credit beginning in year 2	Demand-side management for JI credit beginning in year 3	Forestry projects for JI credit beginning in year 4
Nordic countries	start in 1998	1998	2001	2002
Netherlands	start in 1999	1999	2002	2002
Germany	start in 1999	1999	2002	2003
Poland	start in 2000	2000	2003	2004
Other Baltic	start in 2000	2000	2003	2004

Note that Table 4 above describes a carbon or JI trading programme that starts in 1998. This is because the Nordic countries are likely to have a cross-country electricity trading regime by then and under such circumstances it is possible to begin a JI programme for carbon that could replace the current CO_2 tax system for these countries. (Note: the current Nordic carbon tax systems are incompatible.) So even though international CO_2 commitments might not begin until 2000, a JI programme

success in the Nordic region with both electricity trading and JI could encourage Poland, Lithuania, Latvia, Estonia, and the Kaliningrad oblast to participate beginning in 2000 or 2001, thus forming a Baltic-ring for both electricity trading and carbon trading.

A similar implementation programme could be developed in North America (see Table 5, page 56). The US and Canada could, with relative ease, establish cross-country agreements for trading carbon reductions. The activities that derive from this exercise will coincidentally define the terms and conditions for other North American countries who want to participate in JI activities. Since those entering the larger North American 'bubble' will be net sellers of emission reductions, they will find it comparatively easy to assess what they must do to meet eligibility requirements and what the costs of doing so might be.

Other region-wide carbon-trading regimes could be developed around the world, each building off of a nucleus of two or more countries that have similar cultures, substantial bilateral trade and similar interests in managing greenhouse gases.

The logic for the incremental approach described above is that industry and other stakeholders demand confidence in a JI programme before substantial money flows and trust is manifest. By proving the worth of each bilateral programme, a world-wide and integrated programme is most likely to eventually succeed.

How JI might Evolve in North America

Countries	Repowering for credit beginning in year 1	Supply-side energy efficiency for JI credit beginning in year 1	Demand-side management for JI credit beginning in year 3	Forestry projects for JI credit beginning in year 4
US and Canada	start in 1998			
Mexico	start trading in an *internal* Mexican market in 1999, start cross-country trading 2001 2			
Costa Rica and Honduras	start in 2000 once the required regulatory systems are in place			
Bolivia	start in 200?			
Belize	start in 200?			
Integrate North American JI programme with the Nordic JI programme	start in 2002			

To maintain the credibility of the post-2000 JI programme, no post-2000 credit should be given for transactions that occur during the experimental phase of JI, and no JI-based reductions should be allowed from countries whose regulatory programmes do not meet minimum regulatory standards unless, and until, the generator of the reduction takes on extra-national and enforceable obligations. These provisions reinforce the integrity of the system.

4. Liability Rules

Who should have the responsibility of ensuring that carbon reductions generated through a JI project are genuine? Since the liability for meeting carbon reductions will rest with individual companies covered by the carbon regulatory programme, liability for meeting the terms and conditions associated with JI carbon reductions therefore should rest with the generator of the reduction. No other organisation will have the quantity and quality of information about the JI project. Therefore, the generator is in the best position to understand the quality of and limitations on the project. Thus the generator should be assigned the liabilities associated with the quantity and quality of reductions.

5. Audit Trail and Certifications

JI projects should be audited at least once a year. The audit protocol should be defined in advance and should be based on a review of records as well as field testing. To ensure compliance, the audit should be conducted by a third party to certify compliance with national and international regulatory requirements. Of course, the auditor would incur some liabilities for malfeasance or fraud.

6. If JI Reductions meet the Gold Standard, Trading of Reductions might be Possible

Strips of JI reductions could be tradable to third parties as long as no rule of responsibility, liability, or recourse is broken. Applicable rules governing subsequent transactions should be consistent with the rules governing the initial transaction.

7. Prepare for Mid-Course Corrections

Given that the JI programme will evolve in breadth and complexity and that both institutional learning and mid-course corrections will be required, an ongoing evaluation system should be created and employed. Such a system would collect, validate and organise data describing JI projects. Measures of importance include environmental outcomes and effects on regulatory agencies, the energy sector and on other measures as deemed appropriate including the effects of these projects on stakeholder groups. The purpose of the ongoing evaluation and periodic reporting is to learn how better to operate the project development and crediting system.

However, it is only practical that any substantive mid-course correction to an international or national greenhouse gas regulatory regime should go into effect not earlier than three years after adoption by relevant parties.

8. Immediate Steps

It is important to start two or three embryonic JI programmes by the year 2000 and to expand from this base. The following three steps should lead to that end.

Evaluation

There should be a broad-based and internationally-supervised evaluation of initial JI and JI-related activities; this activity will support both decision-making required at COP III and will also create the foundation upon which JI-promoting policies and programmes will be built.

Re-focus NGO energies

A great mistake is being made by many organisations that are pushing for JI. NGOs and many donor countries must focus their resources on JI-I (institution building) activities. Institution building is not the province of industry, and industry will not invest in promoting the regulatory infra-structure in developing and transitional economies. On the other hand, project activities - JI-P activities - are better developed and better managed by the private sector. It is silly for NGOs to pretend to be industry by developing JI projects. The current shortcoming of JI project development

business works, how business evaluates projects, and why business would select a project for an investment. By focusing on the infrastructure issues *now*, NGOs can prepare the institutional soil in which JI projects will grow.

Develop the concept of a rolling JI programme

JI is complex and it will not suddenly emerge as a finished product; instead JI will evolve. There must be a set of criteria and a schedule for 'rolling-out' a post-2000 JI that produces accreditable emission reductions. This would be a programme whereby certain kinds of projects become eligible for JI accrediting in years 1 and 2 of the programme, while other kinds of projects become accreditable in years 3 and 4, and still others are permissible in years 5 and 6. While the programme itself would slowly expand to include more qualified countries, the programme would also expand to include more and more qualified projects.

Table 6 (page 60) offers one version of how a rolling-JI programme might look. It shows three emerging JI markets becoming integrated in 2003, once regulatory and legal systems have been perfected in each of the three relatively homogeneous regions. After cross-country reductions have been made viable and there has been experience with more complicated JI activities, even more complicated JI activities, such as demand-side management projects, can be introduced.

The three actions outlined above are simple. There is no constituency fighting against an evaluation of JI, the building of the infra-structure that supports good regulatory programmes, and the developing of a rolling JI programme. From these three simple activities derive many subsidiary activities. And from the successful completion of the subsidiary steps flows change. Nevertheless, to effect change, these actions require the immediate involvement of the world-wide business community.

TABLE 6

Expanding the Breadth and Complexity of JI in a Post-2000 Era

Countries	1999	2000	2001 add Baltic countries to the Nordic electricity and CO_2 trading region	2002 integration of all JI markets that participated in the ramp-up	2003	2004
Nordic	R+S for domestic electricity trading	**R+S**	**+D**			
Germany	R+S for domestic electricity trading	**R+S**	**+D**			
Netherlands	R+S for domestic electricity trading	**R+S**	**+D**			
Baltic Countries		**R+S**	**+D**			
US	R+S for domestic electricity trading	**R+S**	**+D**			
Canada	R+S for domestic electricity trading	**R+S**	**+D**			
Mexico	Start with internal SOx and NOx trading		**R**		**+D**	
Other Latin American	Build regulatory infra-structure		**R**		**+D**	
Australia		**R+S**	**+D**			
New Zealand		**R+S**	**+D**			

R = repowering, S = supply-side efficiency, D = demand-side efficiency

15. What are the Logical Steps for Advocates?

Advocates for JI cannot just argue the superior efficiency properties of JI. Regulators and NGOs have legitimate questions regarding the enforceability of international contracts, the reality of claimed reductions and the comparability of environmental protection programmes among the diverse countries of the world. These concerns must be answered simply and thoroughly.

Advocates for JI must reach out to the adversary community. Advocates must provide facts that support their position and change elements in their advocacy position when supporting facts are absent. Unfortunately, the debate over JI has not been a dialogue, nor has it been much of a debate. Instead of arguing, the parties are talking amongst themselves or, often, past each other. One party argues for JI on cost-effectiveness grounds, another argues against JI on the grounds of equity, while a third argues that JI might be either too onerous or simply not cost-effective. There are few opportunities where advocates and adversaries isolate areas of agreement and attempt to resolve disagreements.

Advocates for action on mitigating greenhouse gases must hold their adversaries' feet to the intellectual fire. It is not fair for those who would slow progress toward reducing carbon and other emissions to imply that the cost of such programmes would either end civilisation as we know it or retard the economic progress of the developing world. The experience with air credit trading confirms that the market process produces solutions which cost a small fraction of that projected by simulation models. In addition, if new technologies are promoted, as they will be, the developing world may be the primary beneficiary.

Certainly, there are some advocates for JI who will argue for a less than rigorous programme. There are people who, even when saving 50-75 per cent through a rigorous JI programme, want even cheaper JI reductions that flow from weakly designed, poorly developed and unenforceable projects. There are people who support self-enforcement, weak penalties and modest audit requirements. And while it is true that this would reduce the cost of compliance, so too would no control programme at all! Responsible companies understand the need for rigour and the consequences of laxity.

Advocates for JI who expect to stand side-by-side with responsible NGOs and regulators understand that emissions control targets, timetables, good monitoring and enforceable penalties are all part of a responsible regulatory regime.

What is to be done? This is the fundamental question for the agent of change. The answer is as straightforward as the question:

- understand what mitigating the effects of global climate really means to your company;

- consider the business opportunities presented by this challenge;

- if your company must reduce carbon emission, understand JI and establish leadership on this issue; and

- get involved with your country's negotiators who now only hear inflated costs for reducing carbon emissions and doomsday scenarios for domestic business.

Remember the lessons of emissions trading and SO_2 allowance trading. The costs of compliance under a trading regime are likely to be (and have always been in the past) much less than projected - even one-tenth of projected costs. The invisible hand of the market is alive and well and will point many companies to new markets for the benefit of both today's stockholders and future generations.

BOX 1

What is JI?

The concept of Joint Implementation (JI) was introduced early in the negotiations leading up to the 1992 Earth Summit in Rio, and was formally adopted into the text of the United Nations Framework Convention on Climate Change. The term JI has been used subsequently to describe a wide range of possible arrangements between interests in two or more countries, leading to the implementation of co-operative development programmes or projects that seek to reduce or sequester greenhouse gas emissions. Many countries have supported JI projects before and since the coining of the term.

In October 1993, the United States announced the US Initiative on Joint Implementation (USIJI). Draft ground rules for the USIJI were published for public comment in the Federal Register in December 1993 and the final ground rules were published by the Department of State in a Federal Register notice in June 1994. Several countries have also announced JI pilot programmes.

At the Berlin Conference of Parties in 1995, the JI concept received only mild support, but still there was enough to introduce a pilot phase for JI. The pilot, however, has several restrictions which have limited companies' enthusiasm to participate.

- First, the pilot phase would be for Annex I Parties and on a voluntary basis among non-Annex I Parties.
- Second, all JI projects require prior acceptance and approval by the governments of the Parties participating in the project.
- Third, the results must be real, measurable and not otherwise to have occurred.
- Fourth, the projects must involve additional finance..
- Fifth, *no* credits shall accrue to any party during the pilot phase from any activities implemented jointly.

The Parties involved in an AIJ activity are encouraged to report to the Conference of the Parties through the Secretariat using the framework established in early 1996. This reporting shall be distinct from the national communications of Parties. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation will prepare a synthesis report for consideration by the Conference of the Parties at its annual session to review the progress of the pilot phase.

JI is now referred to as AIJ, Activities Implemented Jointly, but the terms seem interchangeable.

BOX 2
RUSAGAS Fugitive Gas Capture

This project will reduce fugitive methane emissions, improve operational efficiency and seal the valve on the main pipelines that are contiguous to the Storozhovskaya and Pallasovskaya compressor stations.

The project will evaluate the technological, operational and institutional opportunities to reduce methane emissions in the natural gas production and transmission system of Russia. There are five project participants.

1. Oregon State University is located in Corvallis, Oregon (US).

2. Sealweld Corporation works with the gas and oil industry to reduce fugitive natural gas leaks from pipeline valves.

3. GAZPROM, with regional affiliates Volgotransgas and Yugtransgas, is the largest gas producer in the world and also one of the world's largest corporations. GAZPROM and affiliates Volgotransgas and Yugtransgas (all participants in this project) are committed to implementing measures which will protect and enhance both regional and global environmental quality.

4. Centre for Energy Efficiency (CENEf) is a non-profit independent Russian-American organisation founded in 1992 to promote energy efficiency and environmental protection in Russia. Its activities include studies on environmental effects of energy conservation.

5. Sustainable Development Technology Corporation (SDTC) in Corvallis, Oregon, specialises in assisting its clients with the identification and implementation of greenhouse gas emissions reductions strategies.

RUSAGAS is the first joint implementation project between Russia and the United States relating to reducing methane emissions in the atmosphere. It will demonstrate to the United States utility industries the significant potential to reduce emissions of greenhouse gases in the Russian natural gas industry. Because the valve sealing programme may be reproduced at a great number of compressor stations throughout Russia, RUSAGAS will serve as a model joint implementation project which ultimately could have a substantial impact on meeting the goals of the Framework Convention on Climate Change.

To date, this project has yet to obtain full funding. It awaits a sponsor willing to commit approximately $300,000.

BOX 3

The Rio Bravo Pilot Carbon Sequestration Project

The Nature Conservancy. Programme for Belize and Wisconsin Electric Power Company submitted a proposal for the Rio Bravo Pilot Carbon Sequestration Project to the US Initiative on Joint Implementation (USIJI) on 4 November 1994. The project was one of seven approved for the first round of the USIJI on 30 January 1995. It was also approved by the Government of Belize, a party to the United Nations Framework Convention on Climate Change (FCCC).

The Rio Bravo Pilot Project will manage an extensive tropical forest as a 'carbon sink'. The project will demonstrate a credible, accountable strategy to promote beneficial climate change while maintaining an optimal balance between carbon dioxide sequestration, forest timber management and environmental protection. It is designed to conform to the requirements for registration of carbon offsets under Section 1605(b) of the 1992 Energy Policy Act, as well as the sustainable development mandate for the Rio Bravo, established by Programme for Belize and confirmed by the Government of Belize.

Underlying the participants' involvement in the project is a belief in the climate change mitigation effect. PacificCorp, Cinergy and Detroit Edison hope to demonstrate that a voluntary programme of market incentives can be a legitimate approach to ensuring greenhouse gas mitigation. As a central element to ensure that this objective is achieved, the project will include rigorous monitoring and verification.

The project has two components:

Component A includes the purchase of a 15,000-acre parcel of endangered forest land that links two protected properties with Rio Bravo. The greenhouse gas benefit of this purchase is estimated conservatively at three million tons of carbon dioxide.

Component B implements a sustainable forest management programme at the Rio Bravo Conservation and Management Area. The programme is designed to increase the total pool of sequestered carbon in a 120,000-acre area of Rio Bravo, including the area of Component A. It will then seek to extend the sustainable forestry model into the adjacent properties. This component also includes plans to develop and implement a marketing strategy for sustainable timber extraction.

BOX 4
Benefits for US Firms from Participating in USIJI

Input to Development of International Criteria for JI
The US government will include USIJI projects in its presentations under the auspices of the United Nations General Assembly to the Intergovernmental Negotiating Committee (INC) for a Framework Convention on Climate Change (and the Conference of the Parties). Information gained from US participants' projects will contribute to the development of the international programme for JI. Projects undertaken in the pilot phase will also provide vital input for the further development of any future US programme on JI.

Public Recognition
USIJI participants will receive public recognition for their success in reducing or sequestering greenhouse gas emissions and contributing to sustainable development. USIJI will provide participants with a communications programme (including media events) and with rights to use their participation in the programme and the USIJI logo and materials for public relations purposes.

Technical Assistance
The Panel provides a limited amount of general technical assistance in the form of workshops. guidance documents, papers examining specific issues, hotlines, facilitating acceptance of the project by the host country government, identifying or developing appropriate methodologies for establishing a greenhouse gas emissions baseline and measuring greenhouse gas emissions reduced or sequestered.

Facilitate Investments
By reducing transaction costs, the USIJI will facilitate investments in technologies and projects that reduce greenhouse gas emissions while contributing to overall host country development objectives.

Local Environmental and Human Health Benefits
Measures that reduce or sequester greenhouse gases often generate other local environmental and human health benefits by preventing or reducing air, water or soil pollution, and/or by contributing to more sustainable use of natural resources.

Local Economic Benefits
USIJI projects may generate local economic benefits through training, construction of new or improved facilities, public participation in projects and provision of new energy services.

Global Benefits and Promoting Sustainable Development
JI offers the opportunity to cost-effectively reduce or sequester emissions of these gases. The USIJI will encourage additional private sector investment in the development and dissemination of technologies and practices that contribute to sustainable development while reducing or sequestering greenhouse gas emissions.

Elements of the Agreement between Bolivia and the United States

The United States and the Government of Bolivia recognised that controlling greenhouse gas emissions, to limit potential adverse climate change impacts, would be mutually beneficial. Both will benefit from the diffusion and use of sustainable energy and greenhouse gas emission reduction and sequestration technologies and practices. They perceive the potential for additional investment in environmentally, socially and economically sound development through private sector participation. They also intend to facilitate the development of joint implementation projects which should encourage the market deployment of greenhouse gas-reducing technologies, energy efficiency and renewable energy technologies, education, training and information-sharing programmes, increased diversification of energy sources; reduction of greenhouse gas emissions and enhancement of carbon sinks from forests, agriculture, grazing and other lands. Forms of co-operation could include:

- designation of a government office for Bolivia, with the responsibility for project evaluation and issuance of official statements of project acceptance;
- design of Bolivia's programme criteria to facilitate acceptance of joint implementation projects consistent with the ground rules for the USIJI and Bolivia's domestic priorities for measures to reduce greenhouse gas emissions and increase carbon sinks;
- identification and support of projects that are likely to meet the criteria for joint implementation pilot programmes established by the participants;
- exchange of information on methodologies and mechanisms to establish procedures for monitoring and external verification of greenhouse gas reductions, and the tracking and attribution of such reductions. consistent with the criteria for project selection in established national joint implementation pilot programmes and applicable Bolivian law;
- outreach and promotion of joint implementation and other sustainable development activities in the private, public and non-governmental sector, including dissemination of information about the national criteria of the participants for joint implementation projects, and availability of supporting technical assistance resources;
- support of the international pilot phase for joint implementation at an international forum, including at the Conferences of the Parties to the United Nations Framework Convention on Climate Change and meetings of the Conference's subsidiary bodies; and
- exploration of credible certification of emissions reductions, including the determination of reasonable greenhouse gas emissions baselines at the project level.

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HUNTON & WILLIAMS

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RICHMOND, VIRGINIA
WARSAW, POLAND
WASHINGTON, D.C.

CHARLES D. CASE
INTERNET MAIL: ccase@hunton.com

FILE NO.: 34085.5
DIRECT DIAL: (919) 899-3045

FOIA #990430000 03

April 26, 1999

"COMMERCIAL" SEARCH, REVIEW & REPRODUCTION

Mr. Abel Lopez
Supervisor- Office of Freedom of Information and Privacy Act
Department of Energy
1000 Independence Avenue S.W.
Washington, D.C. 20585

APR 3 0 1999 03

Dear Mr. Lopez:

This is a request for all documents from 1997 to the present submitted by John Palmisano related to ENRON and global climate change or emissions trading pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (the "Act"), and the provisions of 40 C.F.R. Part 2. I request that you make a copy of each of the requested documents available to me at the following address:

Hunton & Williams
1900 K Street, N.W.
P. O. Box 19230
Washington, D.C. 20036

This request is for the following documents:

(1) any and all documents from 1997 to the present submitted by John Palmisano related to ENRON and global climate change; and

(2) any and all documents from 1997 to the present submitted by John Palmisano related to ENRON and emissions trading.

If the Department of Energy hereinafter ("DOE"), withholds any document or record responsive to this request, I ask that DOE identify the document, the names and positions of its author(s) and recipients(s), the correct date, the number of pages, the exemption upon which DOE relies for refusing to release the document or record, a detailed explanation of why the Department believes the exemption is applicable, and a detailed explanation of why the public interest would best be served by withholding the document.

Pursuant to 40 C.F.R. § 2.120, Hunton & Williams will pay any reasonable and appropriate charges incurred for search and copying costs. Please send me an invoice along with

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the copies of the documents that I have requested. I need no prior notice of the amount of the incurred costs unless they exceed $100. If the estimated costs are anticipated to exceed $100, please contact me promptly before proceeding with the response to this request.

Pursuant to 40 C.F.R. § 2.112, I request a response from DOE within 10 days (excepting Saturdays, Sundays, and federal holidays) after receipt of this request. If an extension of the 10 day period is requested by the relevant DOE office, I request written notification explaining the reasons for the extension pursuant to 40 C.F.R. § 2.112(e). If there are any questions relating to this request please contact Britt Waldon at 202.955.1681 or me at the letterhead address.

Very truly yours,

Charles D. Case

cc: Britt A. Waldon

Department of Energy
Washington, DC 20585

May 5, 1999

Charles D. Case
Hunton & Williams
1900 K Street, NW
P.O. Box 19230
Washington, DC 20036

Attn: Britt A. Waldon
Re: 9904300003

Dear Mr. Case:

This is in response to the request for information that you made to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for all documents from 1997 to the present submitted by John Palmisano related to ENRON and global climate change and emissions trading.

Your request has been assigned to the Office of Energy Efficiency to conduct a search of its files and to provide you with a response. If you need further assistance, please contact Robbie Dooms EE-62, in the Office of Energy Efficiency, at the Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 or on (202) 586-9332.

Your letter stated that you agree to pay up to $100.00 for search and copying costs incurred to process this request and would like to be notified if fees will exceed the amount that you have stipulated. For purposes of assessment of fees, you have been categorized under the Department's regulation implementing the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(1), as a "commercial use" requester. In this category, you will be charged for search, review and duplication costs associated with the request. The Office of Energy Efficiency will inform you if fees are expected to exceed your stipulated amount.

A search also was conducted of the files of the Office of Executive Secretariat, which controls all incoming correspondence addressed to the Secretary and Deputy Secretary of Energy. The search found no documents responsive to the request. Therefore,

pursuant to 10 CFR 1004.4(d), I am unable to provide any documents responsive to your request from this office.

Pursuant to 10 CFR 1004.7(b)(2), I am the individual responsible for the determination of the Office of the Executive Secretariat.

You may challenge the adequacy of this search for responsive documents by submitting a written appeal to the Director, Office of Hearings and Appeals, U.S. DOE, 1000 Independence Avenue, SW, Washington, DC 20585-0107, within 30 calendar days of receipt of this determination. The written appeal, including the envelope, must clearly indicate that a Freedom of Information Act appeal is being made. The appeal must contain all the elements required by 10 CFR 1004.8 to the extent applicable. Judicial review will thereafter be available to you (1) in the District of Columbia; (2) in the district where you reside; (3) where you have your principal place of business; or (4) where the DOE records are located.

If you have any questions concerning this correspondence, please contact Chris Morris of my staff on (202) 586-3159. I appreciate the opportunity to assist you with this matter and thank you for your interest in the Department.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

FOIA_Folder_Profile

Control # F2001-00330 **Suffix** **Name** FOIA request from Roberto A. Mignone

Corp. Control # 0106110006 **Action Office #**

Field Office HEADQUARTERS

RIDS Information 6

Requestor Type Comm-Business

Folder Trigger FOIA Req Noncent

FOIA Contact WOLFC

Wolf, Carol 202 586-3141

Subject Text

information regarding any inquiries or investigations of enron corporation's potential price gouging on power sales to utilities in the stte of california.

Assigned To

Unassigned Not Yet Assigned

Program Contact

Final Action

NIF No Info Found

Date Received 6/7/01

Correspondence Date 6/11/01

Special Instructions

Int. Resp. Date

Program Completion date

Action Completion Date 7/31/01

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

Department of Energy

Washington, DC 20585

July 31, 2001

Roberto A. Mignone
Bridger Management
101 Park Avenue, 48th floor
New York, NY 10028

Re: FOIA Request No. F2001-00330

Dear Mr. Mignone:

This is in response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for "copies of information regarding any inquiries or investigations of Enron Corporation's potential price gouging on power sales to utilities in the state of California."

The request was assigned to the Office of the Administrator, Energy Information Administration at DOE Headquarters to conduct a search of their files. That office was the Headquarters office most reasonably expected to have documents that are responsive to your request. The search, however, did not locate any documents that are responsive to the request. Inquiries were also made at the DOE Western Area Power Administration in Lakewood, Colorado, but no responsive documents were found at that location. Therefore, pursuant to Title 10, Code of Federal Regulations (CFR), Section 1004.4(d), I am unable to provide any responsive documents.

Pursuant to 10 CFR 1004.7(b)(2), Mr. Scott Sitzer, Acting Director, Office of Integrated Analysis and Forecasting, Energy Information Administration, and Ms. Liova Juarez, General Counsel for the Western Area Power Administration, are the individuals responsible for the determinations by their respective offices.

You may challenge the adequacy of these searches for responsive documents by submitting a written appeal to the Director, Office of Hearings and Appeals, at the U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0107. You should submit the appeal within 30 calendar days of receipt of this determination. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. The appeal must contain all the elements required by 10 CFR 1004.8. Judicial review will thereafter be available (1) in the District of Columbia; (2) in the district where you reside; (3) in the district where you have your principal place of business; or (4) in the district where the DOE records are located.

The above referenced number has been assigned to your request and you should refer to it in correspondence to the DOE concerning this matter. If you have questions about the processing of your request, you may contact Ms. Carol Wolf of my staff on (202) 586-3141.

I appreciate the opportunity to assist you.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

2A

Roberto A. Mignone
Bridger Management
101 Park Avenue, 48th floor
New York, New York 10028
212-984-2124

FOIA/PA SEARCH REVIEW & REPRODUC...

June 7, 2001

ENERGY DEPARTMENT
Director, FOIA/PA Division, HR-73
1000 Independence Ave., S.W.
Washington, DC 20585
(202) 586-5955
fax (202) 586-0575

JUN 11 2001 06

FOIA REQUEST

Dear FOI Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. s. 552, I request access to and copies of information regarding any inquiries or investigations of Enron Corporation's potential price gouging on power sales to utilities in the State of California.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed $50. However, please notify me prior to your incurring any expenses in excess of that amount.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please provide expedited review of this request which concerns a matter of urgency. As a financial analyst, I am primarily engaged in disseminating information.

The public has an urgent need for information about Enron's activities in the power sales market because The State of Connecticut is currently determining whether it should give Enron $124 million in taxpayer funds in order to build a fuel cell plant in the state. The State will be making that determination by July 26th.

I certify that my statements concerning the need for expedited review are true and correct to the best of my knowledge and belief.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Very truly yours,

Rob

ROBERTO A. MIGNONE.

5/11 Spoke to requester, informed that he was to pay search and review also, he agreed to pay up to $750

2b

F2001-00298

6/7/01
Carol

FOIA_Folder_Profile

Control # F2001-00630 **Suffix** **Name** FOIA Request from Josh Gerstein, dated Dec. 12

Corp. Control # 0112130009 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type Scientific

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Records involving the office of the secretary and officials of the Enron Corporation, including Kenneth Lay and Linda Robertson

Assigned To

ME Office of Management, Budget a

Program Contact

Final Action

Date Received 12/13/01

Correspondence Date 12/12/01

Special Instructions

Int. Resp. Date 12/17/01

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

3

Department of Energy
Washington, DC 20585

December 17, 2001

Mr. Josh Gerstein
ABC News
1717 DeSales Street, N.W.
Washington, DC 20006

Re: F2001-00630

Dear Mr. Gerstein:

This in in further response to the request for information you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for:

1. all correspondence involving the Office of the Secretary and officials of the Enron Corporation, including Kenneth Lay and Linda Robertson.

2. all records of meetings involving the Office of the Secretary and officials of the Enron Corporation, including Kenneth Lay and Linda Robertson.

3. any entries in the Secretary's calendar, email or telephone logs pertaining to the Enron Corporation, Kenneth Lay or Linda Robertson.

You state in your letter that you exclude any records prior to January 1, 2000. A search will be conducted of the files of the Office of the Executive Secretariat, the office at the Department most likely to have documents responsive to your request. Upon completion of that search and the review of any documents found responsive, we will send you a response.

You also stated in your letter that you agree to pay all costs incurred to process the request. For purposes of assessment of fees, you have been categorized under the DOE regulation implementing the FOIA at Title 10, Code of Federal Regulations, Section 1004.9 (b)(3), as a "news media" requester. In this category, you will be charged only for duplication and will be provided the first 100 pages at no cost.

If you have any questions about the processing of the request, please contact Ms. Sheila Jeter of my staff at (202) 586-5061. I appreciate the opportunity to assist you.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

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A.

DEC 13 2001

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
-100 FREE PAGES

ABC, INC.

December 12, 2001

Abel Lopez, Director, FOIA/PA Division
U.S. Department of Energy
1000 Independence Avenue, SW, MA-73
Washington, D.C. 20585

Via Fax No. (202) 586-0575

Re: A Freedom of Information Act Request

Dear Sir/Madam:

This is a request for agency records, brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552. (Due to the current delays in postal service, I am submitting this request by fax, but a written copy will follow.)

I hereby request one copy of the following:

1. All correspondence involving the Office of the Secretary and officials of the Enron Corporation, including Kenneth Lay and Linda Robertson.
2. All records of meetings involving the Office of the Secretary and officials of the Enron Corporation, including Kenneth Lay and Linda Robertson.
3. Any entries in the Secretary's calendar, email or telephone logs pertaining to the Enron Corporation, Kenneth Lay or Linda Robertson.

I exclude from my request any records created or dated before January 1, 2000.

I ask that under the fee provisions of FOIA this request be designated as one from a representative of the news media. I agree to pay all fees legally assessed in connection with this request.

I ask that you process records responsive to this request as they become available, rather than waiting for all responsive records before proceeding. Due to the urgency of this request and the ongoing difficulties with mail service, I ask that you phone me at (202) 222-6266 when any response to this request is ready and I will arrange for pickup by courier. Please do not hesitate to call with any questions about this request.

Many thanks for your attention to this request.

Sincerely,

Josh Gerstein
ABC News
1717 DeSales Street, N.W. Washington, DC 20036-4409 (202) 222-7777

Sheila

30

FOIA_Folder_Profile

Control # F2002-00020 **Suffix** **Name** FOIA Request from Judy Pasternak, dated Jan. 1

Corp. Control # **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Subject Text

Copies of all correspondence to, from and regarding Kenneth Lay or Enron Corp., including memos emails, meeting notes and letters, from January 20, 2001 to present

Requestor Type Scientific

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Assigned To

ME Office of Management, Budget a

Program Contact

Final Action

Date Received 1/11/02

Correspondence Date 1/11/02

Special Instructions

Int. Resp. Date 1/15/02

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

Department of Energy
Washington, DC 20585

January 15, 2002

Ms. Judy Pasternak
Mr. Robert Patrick
Staff Writers
Los Angeles Times
1875 Eye Street NW
Washington, DC 20006-5482

Re: F2002-00020

Dear Ms. Pasternak and Mr. Patrick:

This is in further response to the request for information you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for copies of all correspondence to and from Kenneth Lay or Enron Corporation from January 20, 2001 to the present.

Your request has been assigned to the Office of the Executive Secretariat to conduct a search of their files. That office is considered to be the office in the Department most likely to contain documents responsive to your request. Upon the completion of the search and the review of any responsive documents that may be found, we will provide you a response.

You state in your letter that you agree to pay up to $200 for duplication fees incurred to process the request. You also asked to be notified if fees are expected to exceed this amount. For purposes of assessment of fees, you have been categorized under the DOE regulation implementing the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9 (b)(3), as a "news media" requester. In this category, you will be charged only for duplication costs and will be provided the first 100 pages at no cost.

You also have requested a waiver of any fees incurred to process the request. The FOIA, however, provides that "[d]ocuments shall be furnished without any charge or a reduced charge below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government and is not primarily in the commercial interest of the request." See 5 U.S.C. 552 (a)(4)(A)(iii).

The DOE has implemented this statutory standard for fee waivers or reduced fees in its regulation at 10 CFR 1004.9(a). The regulation sets forth the following factors that are considered by the agency in applying the criteria:

(1) The subject of the request: Whether the subject of the requested records concern "the operations or activities of the government."

4A

(2) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) The contribution to an understanding by the general public of the subject likely to result from disclosure;

(4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(6) The primary interest in disclosure: Whether the magnitude or the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

If you would like your request for a fee waiver to be considered, please submit additional information to Ms. Sheila Jeter of my staff that addresses these factors. Your submission should be received by January 28, 2001. If we do not receive the information by this date, we will consider your statement to pay up to $200.00 for costs incurred as your assurance to pay fees associated with this request.

The above referenced number has been assigned to your request and you should refer to it in any correspondence to the Department. If you have any questions about the processing of your request, you may contact Ms. Jeter on (202) 586-5061.

I appreciate the opportunity to assist you, and thank you for your interest in the Department.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

Los Angeles Times

WASHINGTON BUREAU
1875 EYE STREET NW, SUITE 1100, WASHINGTON DC 20006-5482

January 11, 2002

Department of Energy
Abel Lopez
Director, FOIA/PA Division, HR-73
1000 Independence Ave., S.W.
Washington, D.C. 20585
By fax (hard copy to follow)

JAN 14 2002 03

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
-100 FREE PAGES

Dear Mr. Lopez:

On behalf of the Los Angeles Times, and pursuant to the federal Freedom of Information Act, 5 U.S.C. s. 552, I request access to and copies of:

- Copies of all correspondence to, from and regarding Kenneth Lay or Enron Corp., including memos, emails, meeting notes and letters, from January 20, 2001 to the present. Also, copies of all phone logs that show calls to or from Kenneth Lay or any other Enron Corp. officials, lobbyists or representatives, and any notes made of conversations during such calls. Also, schedules showing meetings with any Enron Corp. officials, lobbyists or representatives.

I agree to pay reasonable duplication fees for the processing of this request. However, please notify me prior to your incurring any expenses in excess of $200. Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you cite the specific exemption of the act that justifies each deletion. I will also expect you to release all non-exempt portions of any redacted documents. I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

I look forward to your reply within 20 business days, as the statute requires.

Judy can be reached directly at 202-861-9250 or via e-mail at Judy.Pasternak@latimes.com. I can be reached at 202-861-9288 or Robert.Patrick@latimes.com . I look forward to your reply. Thank you.

Sincerely yours,

Judy Pasternak and Robert Patrick
Staff Writers

FOIA_FOLDER_PROFILE

Control # F2002-00024 **Suffix** **Name** FOIA Request from Tom Hamburger, dated Jan.

Corp. Control # 0201150007 **Action Office #**

Field Office HEADQUARTERS

Rids Information

Requestor Type Scientific

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Communications since Jan. 2001 related to Enron Corp. between members of Congress or their staffs and employees or officials of the executive branch or any independent federal agency

Assigned To

ME Office of Management, Budget a

Program Contact

Final Action

Date Received 1/15/02

Correspondence Date 1/12/02

Special Instructions

Int. Resp. Date 1/16/02

Response Done ☐

Action Completion Date

Prog Comp date (not used)

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8
☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9
☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

Parent Info

Task_Sort

WBLEVEL 0

TopControl F2002-00024

ParentDoc 0

Doc Number 18723

Status OPEN

☐ **Security**

5

Department of Energy
Washington, DC 20585

January 16. 2002

Mr. Tom Hamburger
Wall Street Journal
1025 Connecticut Avenue, NW
Washington, DC 20036

Re: F2002-00024

Dear Mr. Hamburger:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for all correspondence related to the Enron Corporation from January 2001 to the present.

Your request has been assigned to the Office of the Executive Secretariat to conduct a search of their files. That office is considered to be the office in the Department most likely to contain documents responsive to your request. Upon the completion of the search and the review of any responsive documents that may be found, we will provide you a response.

You state in your letter that you agree to pay up to $250.00 for fees incurred to process the request. You also asked to be notified if fees are expected to exceed this amount. For purposes of assessment of fees, you have been categorized under the DOE regulation implementing the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9 (b)(3) as a "news media" requester. In this category you will be charged only for duplication costs and will be provided the first 100 pages at no cost.

The above referenced number has been assigned to your request and you should refer to it in any correspondence to the Department. If you have any questions about the processing of your request, you may contact Ms. Sheila Jeter on (202) 586-5061.

I appreciate the opportunity to assist you, and thank you for your interest in the Department.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

5A

FOIA-Central

From: tom.hamburger@wsj.com
Sent: Saturday, January 12, 2002 12:44 PM
To: FOIA-CENTRAL@HQ.DOE.GOV
Subject: EFOIA Request

FOOO-00004

JAN 15 2002 04

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
-100 FREE PAGES

FROM: tom.hamburger@wsj.com
NAME: Tom Hamburger
SUBJECT: EFOIA Request
CN:
FAX:
FEE: 250
PHONE: 202-862-9223
WAIVER:
ADDRESS: Wall Street Journal 1025 Conn. Ave NW Washington, D.C. 20036
DOCDESC: Tom Hamburger Wall Street Journal 1025 Connecticut Ave. Washington, D.C. 20036 202-862-9223 January 12, 2001 Freedom of Information Officer FOIA/Privacy Office U.S. Department of Energy 1000 Independence Ave., SW Washington, DC 20585 To Whom It May Concern: Please consider this to be a request under the federal Freedom of Information Act. I would like copies of all documents or other material in the Energy Department s possession related in any way to the following matters: 1. Communications since January 2001 related to Enron Corp. between members of Congress or their staffs and employees or officials of the executive branch or any independent federal agency.

2. Communications since January 2001 between Enron Corp. employees or officials and employees or officials of the executive branch or any independent federal agency. Please consider documents or other material to include any and all formats, including but not limited to paper, electronic, audio and video. They also should be deemed to include any relevant emails, phone messages, calendar entries, letters, memos any other documents that either include the communications listed above or refer to such communications. Please consider the executive branch or any independent federal agency to include (but not be limited to) the Energy Department, any other cabinet agency, the Federal Energy Regulatory Commission, the Federal Reserve and its regional banks. As this request relates to a newsworthy matter of great public interest, please expedite it to the extent possible. Please do not wait until all documents are retrieved to comply with this request I would like all documents as soon as they are ready. The Wall Street Journal is willing to pay all reasonable and appropriate costs, but please contact me first if the estimated costs exceed $250. In advance, thank you very much for your cooperation in this matter. If you have any questions, please feel free to contact me at 202-862-9223. Sincerely, Tom Hamburger Staff Writer
EMAILTO:-FOIA-CENTRAL@hq.doe.gov
COMMENTS: Please expedite as this is an urgent request in the public interest.
CONTYPES: Contract
DOCUMENT: other
MEDIANAME: Wall STreet Journal
MEDIATYPE: Newspaper
OTHERDESC:

Sheila
5B

Department of Energy
Washington, DC 20585

January 15, 2002

Mr. Tom Hamburger
Wall Street Journal
1025 Connecticut Ave.
Washington, DC 20036

F2002-00024

Re: Communications since January 2001 related to Enron Corp. between Members of Congress or their staffs and employees or officials of the Executive branch or any independent federal agency

Dear Mr. Hamburger:

Thank you for the request for information that you made to the Department of Energy under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Your letter was received in this office today, and has been assigned a controlled number, F2002-00024. Since we receive several hundred requests a year, please use this number in any correspondence with the Department concerning your request.

We are reviewing your letter to determine if it addresses all of the criteria of a proper request under the FOIA and the Department's regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004. We will send you a subsequent letter informing you if we need additional information or stating where the request has been assigned to conduct a search for responsive documents.

I appreciate the opportunity to assist you with this matter. If you have any questions about this letter, please contact this office on (202) 586-6025.

Sincerely,

Abel Lopez

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

SC

FOIA_Folder_Profile

Control # F2002-00027 **Suffix** **Name** FOIA Request from J. Christopher Farrell, dated J

Corp. Control # 0201150010 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type Scientific

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Enron Chief Executive Kenneth L. Lay and Energy Secretary Spencer Abraham, to include but not limited to communications on Nov. 2, 2001

Assigned To

Unassigned Not Yet Assigned

Program Contact

Final Action

Date Received 1/15/02

Correspondence Date 1/14/02

Special Instructions

Int. Resp. Date

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

6

Department of Energy

Washington, DC 20585

January 16, 2002

Christopher J. Farrell
Judicial Watch
501 School Street, SW, Suite 725
Washington, DC 20024

Re: F2002-00027

Dear Mr. Farrell:

This is an interim response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for information that pertains to the Enron Corporation.

In a telephone conversation with Mr. Chris Morris on January 15, 2001, of my staff, you indicated that you only intended to ask for documents from DOE responsive for Item 7 of the request. That item asks for information related to Kenneth L. Lay and Secretary of Energy Secretary Spencer Abraham, and that includes, but not limited to, communications on November 2, 2001.

The request has been assigned to the Office of the Executive Secretariat to conduct a search of their files. That office is considered the office in the Department most likely to contain documents responsive to your request. Upon the completion of the search and the review of any responsive documents that may be found, we will provide you a response.

Your letter requested that the Department waive any fees incurred to process the request. I have considered the information that you provided in your letter and determined that it satisfies the criteria considered in making a determination to waive fees. Fees incurred to process the request will be waived.

You also have requested expeditious handling of the request. The FOIA permits agencies to expedite the processing of a request if the requester demonstrated a "compelling need." A compelling need" is established when two criteria are met. The criteria are (1) failure to obtain the records quickly "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or (2) if the "requester is primarily engaged in disseminating information" and can demonstrate that there is an "urgency to inform the public concerning the actual or alleged Federal Government activity."

You have stated that there is a compelling need for the information because you disseminate information as a legitimate news source. Furthermore, you state that the documents requested concern matters of widespread and exceptional media interests in which there exist possible questions about the government's integrity that affect public confidence.

6A

The reasons that you have provided do not adequately address the basis under which a request may be expedited. You have not articulated or established that there is any threat to the life or safety of an individual that would justify expeditious processing of the request. Moreover, you have not established that there are questionable DOE activities, or identified any particular urgency that requires the provision of information in an expedited manner.

For these reasons, I am denying your request for expedited treatment. Your request will be processed in accordance with the statute and the Department's regulations that implement the FOIA.

I appreciate the opportunity to assist you with this matter. If you have any questions concerning this correspondence, please contact Ms. Sheila Jeter of my staff at (202) 586-5061.

Sincerely,

Jerlette G. Moore

for Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

Judicial Watch, Inc.

501 School Street, S. W., Suite 725
Washington, D. C. 20024
(202) 646-5172
Fax: (202) 646-5199

FAX TRANSMISSION COVER SHEET

To: FOIA Officer - US Department of Energy

Date: JAN 14 2002

Fax: 202-586-4403

Phone:

Sender:

Freedom of Information Act
Request

YOU SHOULD RECEIVE ___PAGE(S), INCLUDING THIS COVER SHEET.
IF YOUDO NOT RECEIVE ALL THE PAGES, PLEASE CALL JOAN AT (202) 646-5172.

Cofb

Judicial Watch

Because no one is above the law!

January 14, 2002

JAN 15 2002 10

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
-100 FREE PAGES

VIA CERTIFIED MAIL AND FAX

Melaine Ann Pustay
Department of Justice
Office of Information and Privacy
Suite 570, Flag Building, DOJ
Washington, DC 20530-0001

Kevin F. Cadden
Director, Office of External Affairs
Federal Energy Regulatory Commission
888 First Street, NE, Room 11H-1
Washington, DC 20426

Brenda Dolan
Department of Commerce
FOIA/PA Officer, Room 6020
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Abel Lopez
Director, FOIA/PA Division, MA-73
1000 Independence Avenue, S.W.
Washington, D.C. 20585

U. S. Treasury Department
Disclosure Services
1500 Pennsylvania Avenue, N.W., Room 1054
Washington, DC 20220

Re: Freedom of Information Act Request

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (hereinafter, "FOIA"), 5 U.S.C. 552, and its regulations, we hereby request from the Department of Justice (DOJ), US Treasury Department (Treasury), Department of Commerce (DOC), Department of Energy (DOE), Federal Energy Regulatory Commission (FERC), all correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, video recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things, that refer or relate to the following in any way:

1. Enron Chief Executive Kenneth L. Lay and Treasury Secretary Paul H. O'Neill, to include but not limited to communications on October 28, 2001 and November 8, 2001.

2. Enron Chief Executive Kenneth L. Lay and Commerce Secretary Donald L. Evans, to include but not limited to communications on October 29, 2001.

3. Communications between any and/or all Enron officers, executives, and/or employees and Treasury Undersecretary Peter R. Fisher.

4. Contacts, communications, consultations and/or requests for assistance, help, favors, information and/or consideration by Enron officers, executives, and/or employees to employees, officers and/or executives of the Federal Energy Regulatory Commission and the U. S. Departments of Treasury, Commerce, Energy and/or Justice.

5. Former Clinton Administration Treasury secretary and current chairman of the executive committee of Citigroup, Robert E. Rubin and Treasury Undersecretary Peter R. Fisher, to include but not limited to Enron Corporation.

6. Enron President Lawrence "Greg" Whalley and Treasury Undersecretary Peter R. Fisher.

7. Enron Chief Executive Kenneth L. Lay and Energy Secretary Spencer Abraham, to include but not limited to communications on November 2, 2001.

8. The decision not to take action to mitigate the harm of Enron's bankruptcy to thousands of its employees and shareholders.

9. Enron Chief Executive Kenneth L. Lay and Federal Energy Regulatory Commission Chairman Curtis Herbert, Jr., to include but not limited to communications concerning energy deregulation.

10. Contacts and/or communications by Treasury Department officials and/or employees to financial firms, to include but not limited to Goldman Sachs Group and Morgan Stanley, concerning Enron Corporation.

11. Treasury Undersecretary Peter R. Fisher and Lloyd C. Blankfein of Goldman Sachs concerning Enron Corporation.

1/15 Spoke w/ Mr. Farrell, he indicated that only Item 7 was intended for DOE to take action on.

ACM

12. Treasury Undersecretary Peter R. Fisher and Dino Kos, the executive vice president and manager of the Federal Open Market Desk at the Federal Reserve Bank of New York concerning Enron Corporation.

Thank you for your expected cooperation in responding to our request in a timely manner, which should be within 10 working days, as required under 31 CFR § 1.5, 28 CFR § 16.5 (b), 10 USC § 1004, 15 CFR § 4.6 (b) (1), 10 CFR § 1004.5 and 5 U.S.C. § 552 (a)(6)(E)(ii)(I), because time is of the essence. The American people deserve full and complete disclosure of the matters requested herein, pertaining to the federal governments actions towards the financial collapse of the Enron Corporation, current government investigations of the collapse, and its past and present relationship with high-ranking officials of the United States government. Judicial Watch, through a variety of means and media detailed below and consistent with its legal and public education mission will rapidly and efficiently disseminate the information obtained under FOIA to the American people. In order to accomplish these aims, it is critical that the American people have this request answered in a timely manner.

Pursuant to the FOIA, if any portions of the requested documents are claimed to be privileged, those portions which are not claimed to be privileged should be provided to the undersigned. This should be done prior to the conclusion of the statutory 20-day period for response. In addition, under the FOIA there is an absolute requirement to produce those segregable portions of documents which are not claimed to be privileged, as well as a list ("Vaughn Index") that indicates by date, author, general subject matter, and claims of privilege(s) those documents, or portions thereof, which have been withheld or not provided. Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir 1973), cert. denied, 415 U.S. 977 (1974); Iglesias v. Central Intelligence Agency, 525 F. Supp. 547 (D.C. 1981); see generally LaRocca v. State Farm Mut. Auto. Ins. Co., 47 F.R.D. 278 (W.D. Pa. 1985).

We note that President Clinton instructed agencies in October, 1993, to ensure compliance with both the spirit as well as the letter of the Act. *See* President Clinton's FOIA Memorandum, U.S. Department of Justice, FOIA Update, Summer/Fall 1993, at 3. In addition, Attorney General Ashcroft issued a FOIA Memorandum on October, 12, 1993, which *inter alia* states "the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act... It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed." and orders "a presumption of disclosure." *See* Attorney General Ashcroft's FOIA

Memorandum, U.S. Department of Justice, FOIA Update, Fall 2000, at p. 1.

Judicial Watch is entitled to a public interest fee waiver for this request. At 5 U.S.C. § 552 (a) (4) (A) (iii), the FOIA sets forth a two prong test to determine whether a fee waiver is appropriate. First, the disclosure must be in the public interest by contributing significantly to the public's understanding of the operations of the government. *Schrecker v. Department of Justice,* 970 F. Supp. 49, 50 (D.D.C. 1997); *Fitzgibbon v. Agency for International Development,* 724 F. Supp. 1048, 1050 (D.D.C. 1989); *Larson v. Central Intelligence Agency,* 843 F.2d 1481, 1483 (D.C. Cir. 1988). Second, the disclosure must not be primarily in the commercial interest of the requester. *Schrecker,* 970 F. Supp. at 50; *Fitzgibbon,* 724 F.2d at 1050; *Larson,* 843 F.2d at 483.

Judicial Watch is a 501 (c) (3) not-for-profit public interest organization. One of its purposes is to provide the public with information which exposes government activities that are contrary to the law. Judicial Watch is, in effect, an educational foundation, as well as a law firm, which uses several mechanisms for the dissemination of the information it acquires, and operates to ensure that this information will be made available to the public on a daily basis:

- Judicial Watch, as a press entity itself[1], produces several press releases each week.

- The *Judicial Watch Newsletter* has a monthly circulation of over 300,000 copies nationwide.

- Judicial Watch maintains a website on which people can view copies of, among other things, FOIA documents, press releases, responsive documents, deposition transcripts and court opinions. This website is viewed by over 20,000 people per day on average, and on a few occasions, had logged up to 1,000,000 visitors in a single day.

- Over 60,000 people subscribe to our "Infonet" listserve for daily updates on our lawsuits, FOIA requests, investigations and public education programs.

[1] *See* Memorandum and Order, *Judicial Watch, Inc. v. U.S. Department of Justice,* Civil Action No. 00-1396 (JR), Nov. 16, 2000.

- Judicial Watch's Chairman has been invited to testify before Congressional committees as an expert witness on legal matters, including, but not limited to the Privacy Act and the Freedom of Information Act.

- Judicial Watch's Chairman and other employees frequently appear on nationally broadcast radio and television programs to provide information, analysis and commentary concerning government corruption and other legal issues.

- Judicial Watch has been credited by Courts, the Congress and various other media outlets on several occasions for uncovering information and documents concerning government corruption, illegal and/or inappropriate activities, and documented instances of government attempts to "stonewall" requests for information and accountability in the public interest.

- Judicial Watch is involved in the production and broadcast of a monthly one hour news and information television program, *Public Disclosure*, fashioned after the long running news broadcast *60 Minutes*. *Public Disclosure* is syndicated across the country.

- Judicial Watch produces its own twice-weekly television show and daily radio program, both entitled *The Judicial Watch Report*, which air nationwide through syndication on cable television and radio stations, as well as the Internet. *The Judicial Watch Report* 800-station radio show, launched on October 29, 1001, is hosted by broadcast veterans Russ Verney and Jane Chastain. Judicial Watch disseminates information it obtains through these mediums as well.

- Judicial Watch hosts and sponsors conferences and rallies as public education forums for the dissemination of the information it acquires. For example, Judicial Watch hosted an Ethics in Government 2000 Conference at the Washington Hilton on October 20-21 2000 and an Ethics in Government 2001 International Conference,

"Fighting Corruption, Fostering Freedom," on October 5– 6, 2001 in Miami, Florida.

In short, Judicial Watch's efforts to expose government corruption make news on almost a daily basis, and it functions, in part, as a member of the media.

The subject of this request is a "breaking news" story, and of great concern to the American people and all who seek full disclosure of the reasons behind the largest bankruptcy in American history, to determine matters and issues of equal treatment under the law.

Indeed, there is an unequivocal public interest served by revealing the aforementioned documents. The American people should be made aware of, among other things, reports, investigations, decisions, waivers and findings of fact concerning the present financial collapse of the Enron Corporation, current federal investigations regarding the collapse, and its relationship with both political parties. It has now surfaced that the leaders of the Enron Corporation, and its CEO Kenneth Lay, had contact with the Energy Policy Task Force chaired by Vice President Richard Cheney, who received nearly $2 million dollars from Enron in the 2000 election campaign. In addition former Treasury Secretary Robert Rubin contacted a Treasury Department official last fall to explore an financial intervention for collapsing Enron from the Bush Administration. Enron CEO Kenneth Lay contacted Commerce Secretary Don Evans regarding government action on behalf of Enron as well. How federal officials, many of whom have received political contributions from Enron, are currently treating the collapse and investigations of this major corporation, is of great importance to the American people and all who seek equal treatment under the law, and is thus leading the news. This information is not merely intended to satisfy the curiosity of a few. To be sure, the public is always well served when it knows how government activities, particularly matters touching on legal and ethical questions, have been conducted. This request is based, in part, on news articles. *See* Dana Milbank and Susan Schmidt. "Rubin Asked Treasury About Aid to Enron," *The Washington Post*. January 12, 2002; Dana Milbank and Peter Behr. "Enron Asked for Help From Cabinet Officials," *The Washington Post*. January 11, 2002; Richard Berke. "Parties Weigh Political Price of Enron's Fall," *The New York Times*. January 12, 2002; Christopher Newton. "Enron Contributed to Both Parties," Associated Press. January 12, 2002; H. Josef Herbert. "White House Blunts Enron Fallout," Associated Press. January 12, 2002. Copies of

which are enclosed with this request.[2]

Thus, we are convinced that the information requested will be meaningfully informative in increasing public of the relationship that government officials have with the Enron Corporation and their attitudes and actions toward its collapse and subsequent investigation. Hence, we submit this request.

Clearly, information that exposes government activity that is contrary to the rule of law will contribute significantly to the public's understanding of the operations and activities of government. In fact, according to the *Office of Management and Budget, Freedom of Information Reform Act of 1986 – Uniform Freedom of Information Act Fee Schedule Guidelines,* § 67(g), this is one of the categories of activity which courts have characterized as in the public interest.

Congress has spoken clearly on this subject by amending FOIA so that it can "be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation,* at 1284 (quoting 132 Cong. Rec. S14298 (Sept.30, 1986). The main purpose of the amendment, according to Senator Leahy, was to prevent gamesmanship on the part of government agencies i.e., to "remove roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under FOIA." *Id.* (quoting 132 Cong. Rec. S16496, October 15, 1986).

We request expeditious handling and immediate release of the requested information in the public interest.

In accordance with 31 CFR § 1.5, 28 CFR § 16.5 (b), 10 USC § 1004, 15 CFR § 4.6 (b) (1), 10 CFR § 1004.5 and 5 U.S.C. § 552 (a)(6)(E)(ii)(I) we submit this request be granted and expedited because the information is urgently needed for dissemination so that the public may be informed about the national security and safety the actual or alleged actions of agencies of the

---

[2] Dana Milbank and Susan Schmidt. "Rubin Asked Treasury About Aid to Enron," *The Washington Post.* January 12, 2002; Dana Milbank and Peter Behr. "Enron Asked for Help From Cabinet Officials," *The Washington Post.* January 11, 2002; Richard Berke. "Parties Weigh Political Price of Enron's Fall," *The New York Times.* January 12, 2002; Christopher Newton. "Enron Contributed to Both Parties," Associated Press. January 12, 2002; H. Josef Herbert. "White House Blunts Enron Fallout," Associated Press. January 12, 2002.

Federal Government.

In addition, we find a compelling need for the requested information given that a significant part of our operation involves disseminating information as a legitimate news source. Thus, we assert that the request concerns matters of widespread and exceptional media interests in which there exist possible questions about the government's integrity (to include senior government officials) which effect public confidence.

Judicial Watch certifies that under the provisions outlined in 31 CFR § 1.5, 28 CFR § 16.5 (b), 10 USC § 1004, 15 CFR § 4.6 (b) (1), 10 CFR § 1004.5 and 5 U.S.C. § 552 (a)(6)(E)(ii)(I), we have a compelling need for information sought herein.

Release of the information will promote confidence in our Constitutional Republic, and contribute to furthering the integrity of the American national government by deterring and/or sanctioning corrupt activities. The failure to do so will likely result in the further compromise of important interests of the American people.

Sincerely,

JUDICIAL WATCH, INC.

Christopher J. Farrell

CJF/mac

Rubin Asked Treasury About Aid to Enron

By Dana Milbank and Susan Schmidt
Washington Post Staff Writers
Saturday, January 12, 2002; Page A01

Former Clinton Treasury secretary Robert E. Rubin telephoned a top Treasury official last fall to explore whether the Bush administration could intervene on behalf of Enron Corp. as the giant energy company neared collapse, officials said yesterday.

Rubin, chairman of the executive committee at Citigroup, one of Enron's main creditors, called Peter Fisher, Treasury undersecretary for domestic finance, and asked "what he thought of the idea" of calling bond-rating agencies to help forestall a crippling reduction in Enron's credit rating, according to a statement released by the Treasury Department.

Fisher told Rubin that he didn't think it was advisable, and did not make a call, Treasury said.

The news of Rubin's efforts concluded another day of disclosures at the Treasury Department, on Capitol Hill and elsewhere about the extent of government contact with Enron executives in the weeks before the company's filing for bankruptcy court protection.

Yesterday's developments included the Treasury Department's disclosure that Enron President Lawrence "Greg" Whalley had "six to eight" conversations last fall with Fisher, including one in which he asked Fisher to call Enron's lenders as they decided whether to extend credit to the company.

Also yesterday, Congress moved closer to filing a lawsuit against Vice President Cheney to force the release of information on administration meetings with energy industry executives last spring. Congressional Democrats want to know how much influence the executives may have had on administration energy policy.

Enron's Dec. 2 filing for bankruptcy law protection was the largest in U.S. history, wiping out the pensions of thousands of workers. The Justice Department opened a criminal investigation into the collapse, and President Bush on Thursday created task forces to examine changes to the law to protect pensioners in bankruptcies.

That same day, Enron's auditor acknowledged it had destroyed thousands of documents; two Bush Cabinet secretaries said they had received calls from Enron's chief executive, Kenneth L. Lay, as the company neared collapse; and Attorney General John D. Ashcroft recused himself from the government's criminal probe because he had received contributions from Enron for his 2000 senatorial campaign.

As lawmakers and the administration tried to sort out the legal and political consequences of the growing controversy, the administration argued forcefully that there was no wrongdoing because its officials did not intervene to aid Enron. But some Democrats, including Rep. Henry Waxman (D-Calif.), said the administration should have tried to protect Enron workers and pensioners after learning the company was about to declare bankruptcy.

The Treasury Department's statements about Rubin showed Enron's political reach and the administration's determination to point out that the company had contacts with prominent Democrats as well as Republicans.

According to the Treasury statement, Rubin inquired Nov. 8 whether the government could encourage the bond agencies to work with Enron's lenders to "see if there is an alternative to an immediate downgrade" of Enron's credit rating. The downgrade likely would have forced the company into bankruptcy.

A source close to Rubin said the Treasury statement was "largely accurate," but that Rubin prefaced the call by telling Fisher, "This is probably not a good idea." The source said that a potential merger between Enron and its Houston neighbor, Dynegy Inc., was in trouble and that Rubin was "trying to hold it all together."

Citigroup is one of Enron's two principal bankers, along with J.P. Morgan. The banks were side by side with Enron in November as it struggled to keep alive the Dynegy deal. The banks have taken the lead in trying to raise as much as $1.5 billion to help Enron through its bankruptcy reorganization effort.

The Treasury Department also said that in one of his telephone calls to Fisher during late October and early November, Whalley suggested Fisher help Enron secure a credit extension. Enron yesterday suggested the comment was made in jest. Fisher declined to ask for the extension, Treasury spokeswoman Michele Davis said, but he did talk to banks about whether Enron's collapse would so roil the banking system or capital markets that the government would be forced to intervene. The answer Fisher received, Davis said, was that the banks and markets could absorb the loss.

The disclosures portray more intensive contact between the administration and Enron than the White House had indicated on Thursday. The administration said then that Lay had two conversations with Treasury Secretary Paul H. O'Neill and one with Commerce Secretary Donald L. Evans.

Lay suggested to Evans that it would be helpful for Evans to try to persuade a private credit-rating agency not to downgrade Enron's debt, and Evans declined, according to the Commerce Department.

The administration said nobody intervened to aid Enron. White House spokesman Ari Fleischer and Mary Matalin, senior aide to Cheney, said they do not believe any White House officials, including Bush and Cheney, heard of the approaches from Enron officials until Thursday.

Congressional aides said yesterday that senior Democratic senators were preparing a letter to the investigative arm of Congress, the General Accounting Office, encouraging it to proceed with efforts to obtain records of meetings by Cheney's energy task force, which drew up the administration's energy policy last spring. The GAO has said it would decide within a month whether to file a lawsuit to obtain the records, which the White House has said it would not provide. Congressional officials said GAO action is likely to come soon, but the agency is waiting for a guarantee of support from lawmakers. Senate aides said Sen. Byron Dorgan (D-N.D.), who heads a Commerce subcommittee examining Enron, has been working on a letter of support to the GAO, possibly to be joined by others.

A spokeswoman for Sen. Joseph I. Lieberman (D-Conn.), chairman of the Senate Governmental Affairs Committee, said he believes "Congress has a right to the information" and hopes the administration will turn it over without a lawsuit.

Some Republican lawmakers have also called on the White House to provide the records of its energy task force. "It is just basic information that should be provided and isn't all that big a deal, except for the fact that the administration doesn't want to share it, which makes it a big deal," said Rep. Christopher Shays (R-Conn.), who called on the GAO to proceed. Earlier this month, the White House disclosed that its energy task force met six times with Enron officials but said the company's finances were not

discussed.

Matalin said the administration position on releasing the information was unchanged. "If they want to know what we discussed, read the first energy policy in a generation," she said. The House Energy and Commerce Committee asked yesterday for hundreds of new records from Enron's auditor, Arthur Andersen LLP, including the personal files of David Duncan and five other Andersen partners involved in the audit of the company. The committee believes many of the destroyed documents were e-mails sent to and from executives, committee spokesman Ken Johnson said.

The Senate's Permanent Subcommittee on Investigations issued 51 subpoenas to Enron and Andersen yesterday. Its chairman, Sen. Carl Levin (D-Mich.), said, "We are going to be looking into the circumstances surrounding the board members' Enron stock and option trades, the conduct of the board's audit committee, the conduct of the board with respect to both internal and external audits."

While congressional committees pursued their investigations, political party officials tried to taint each other with donations received from the company. Since 1989, Enron has made $5.8 million in campaign donations -- 73 percent to Republicans and 27 percent to Democrats.

The Republican National Committee pointed out that a large number of top Democrats received Enron contributions, including Lieberman, Senate Majority Leader Thomas A. Daschle (S.D.) and House Minority Leader Richard A. Gephardt (Mo.). The RNC also pointed out that the Democratic National Committee had received $285,000 in Enron contributions in 2000. But Rep. Thomas M. Davis III (R-Va.) said yesterday the National Republican Congressional Committee will return $100,000 donated by Enron last year and called for bipartisan investigation into the company's bankruptcy and requests for government help.

"If anybody else wants to focus on politics, that's their prerogative, but the president's focus is on getting to the bottom of this fully," Fleischer said. As a political issue, he said, "this dog won't hunt."

Fisher, the Treasury official asked to intervene with Enron's lenders, is a Democrat. He was previously with the Federal Reserve Bank of New York and helped orchestrate a private-sector bailout for Long-Term Capital Management, a $4 billion hedge fund.

His current job is to monitor the financial markets. He kept in contact with the big players on Wall Street, constantly asking if they sensed any fallout from Enron's market condition. Michelle Davis said Fisher "politely demurred" when he sensed he was being asked to contact the banks. Robert Bennett, an attorney for Enron, said Whalley called Fisher whenever there was bad news to report, but suggested his comments were less sinister than the Treasury Department indicated. According to Bennett, Whalley told Fisher, "It would be nice if you could get these banks to lend us some money. But I should tell you, our credit is not good." Bennett said Whalley then laughed.

In addition to calling O'Neill and Evans, Lay called Federal Reserve Chairman Alan Greenspan on Oct. 26. "We will not characterize the conversation," a Fed spokeswoman said. "The chairman did nothing in response to the call because it would have been inappropriate."

Karen Denne, spokeswoman for Enron, said: "Mr. Lay does not believe he asked for anything. He wanted to provide information."

Staff writers John M. Berry, Glenn Kessler and Spencer Hsu contributed to this report.

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January 12, 2002

Parties Weigh Political Price of Enron's Fall

By RICHARD L. BERKE

WASHINGTON, Jan. 11 — Concern that the escalating Enron inquiry could ensnare the White House has rattled some Republicans in Congress, who said they were not yet willing to defend the administration while so many facts were still unknown but who warned Democrats against trying to use the case for partisan advantage.

In interviews, many Republicans said they were hopeful that the investigations would conclude that administration officials had done nothing wrong. But they were approaching the matter warily because so many questions remained unanswered.

"The danger here is if somebody acted in a capacity for the administration and the administration cut them a special favor," said Representative Thomas M. Davis III of Virginia, chairman of the National Republican Congressional Committee. "Then you have an issue. So far, there's no evidence of that. But we have a responsibility to take a look."

Representative Mark Foley, Republican of Florida, said that while he would be surprised if there was a finding of wrongdoing by the White House: "I don't think this goes away. We have to go to where this leads us. It doesn't matter if it's a cabinet secretary or a line worker in the White House."

Mr. Foley added, "When the front page described a presidential link, it's not helpful."

Already, the publicity over Enron has unnerved Republican politicians as Mr. Bush tries to keep the public rallied behind the war and his plans for the economy, and his party is gearing up for midterm elections. With the prospect of Congressional hearings, the distraction is likely to continue for some time.

"This is counterproductive to us keeping focused on what we need to keep focused on," said Mike McDaniel, chairman of the Republican Party in Indiana. "We still have men and women out there putting their lives on the line. But the Democrats are ramping it up to make it an issue in the campaign."

Indeed, Democrats are savoring what some describe as the biggest opening they have had to portray Mr. Bush and his party as pawns of special interests. Several party leaders said their strategy was to not appear crassly political by attacking the White House. Instead, they intend to sit back quietly, expressing sympathy for workers and investors hurt by Enron's collapse as Republicans

face a cascade of questions.

"The strategy is going to be to let the investigation take its course and not to dial it up politically," said one Democratic Party official. "If your enemy is shooting themselves in the foot, you let them."

Terry McAuliffe, the Democratic Party chairman, followed just that course in an interview, saying, "This issue does not need any fuel from Terry McAuliffe. It has enough on its own. So I'm going to stay right out of it."

The Democrats also could be restrained by the disclosure today that Robert E. Rubin, the Treasury secretary under President Bill Clinton and now a top executive at Citigroup, had called a senior Treasury official to ask whether he would consider asking a bond-rating firm to hold off on downgrading Enron's debt, a move that could cost Citigroup millions of dollars. The Treasury official, Peter Fisher, a Democrat, said he would not intercede.

Another reason Democrats said they were treading carefully is that Enron was also a generous donor to Democrats, including Senators Charles E. Schumer of New York, Jeff Bingaman of New Mexico and John B. Breaux of Louisiana and Representative John D. Dingell of Michigan. In fact, Republicans plan to portray the Enron collapse as a bipartisan disaster.

"It's a little difficult for the Democrats to point their fingers," said former Representative Bill Paxon, a New York Republican who is close to the White House.

Tad Devine, a top strategist for Al Gore in the 2000 presidential campaign, conceded: "Our party has to be careful in the way we pursue it. The Republicans demonstrated in the 90's that if you are overzealous in political persecution, you'll pay a price."

But Mr. Devine asserted that Enron's donations to Democrats would not deter his party from making it a campaign issue. "Sure, Democrats received money from Enron," Mr. Devine said. "But the locus of support Bush had, with Enron being out of his home state, could make this a very big problem for him."

The White House is clearly on the defensive. Today, for perhaps the first time in her tenure as Vice President Dick Cheney's counselor, Mary Matalin was in full political tilt. She and other Republicans invoked Clinton scandals — including his affair with a White House intern — as they defended their own president.

Appearing this morning on the Don Imus radio program, Ms. Matalin said critics "act like there's some billing records or some cattle scam or some fired travel aides or some blue dress."

The president himself has also been on the defensive, putting some distance between himself and Kenneth L. Lay, the chairman of Enron, by saying that Mr. Lay had supported Ann Richards, the former Democratic governor of

Enron's attorney, Robert Bennett, said Lay believed he had an obligation to alert the administration to Enron's precarious condition and the possibility that it could fall into bankruptcy. "He asked them for nothing," Bennett said.

Federal and congressional investigators are probing whether senior Enron executives exaggerated company profits and concealed rapidly mounting debts through hundreds of investment partnerships and offshore corporations.

Andersen's disclosure of destroyed records, which led the firm to hire former senator John Danforth to examine Andersen's records management, infuriated lawmakers. Sen. Carl Levin (D-Mich.), who heads a Senate Governmental Affairs subcommittee investigation of Enron, said the destroyed records would be a new priority.

House Energy and Commerce Committee Chairman Billy Tauzin (R-La.) said of the lost documents: "Anyone who destroyed records simply out of stupidity should be fired. Anybody who destroyed records to try and subvert our investigation should be prosecuted."

Investigators for the committee first requested the records on Dec. 13. But Bennett said Enron was unaware that Andersen was destroying records. "The first they heard of it was today," Bennett said, after checking with a senior Enron executive.

Andersen promised "all appropriate remedial and disciplinary action."

Rep. Henry Waxman (D-Calif.), who has been pressing for more information on White House ties to the energy industry, said Bush should have intervened -- not to help Enron but to help its workers.

Waxman sent a letter to Ashcroft yesterday asking the attorney general to recuse himself before Ashcroft did just that.

The White House sought to preempt congressional inquiries. Fleischer warned Democrats against investigations into the administration's dealings with Enron. "The American people are tired of partisan witch hunts and endless investigations," he said.

Fleischer also said there was no need for a special prosecutor.

But Republican officials on Capitol Hill said they had little desire to defend the administration and suggested the White House make fuller disclosures of contacts with energy officials. "I don't know why they're sitting on it," said a GOP official on the House Government Reform Committee. "By not getting it all out, it makes it look like they're covering something up."

Tom Cole, a former chief of staff for the Republican Party, put forth his concern: "The real question is, was there something given to Enron that was inappropriate? I don't have the answer to that."

But, Mr. Cole added, "If Whitewater didn't help us, I don't think Enron's going to help them. The politics of scandal have not been successful in tipping the partisan balance of power in Washington during the Clinton administration And particularly in the wake of Sept. 11, this stuff seems pretty trivial."

Texas, over him in the 1994 campaign.

Besides trying to stoke questions about the Democrats, the White House approach is to make the point that the president has nothing to hide.

"If anybody else wants to focus on politics, that's their prerogative," said Ari Fleischer, the White House press secretary. "But the president's focus is on getting to the bottom of this fully" by supporting a thorough criminal investigation and policy review.

Asked if the Enron affair and the resulting investigations could dog the president throughout the year, Mr. Fleischer said: "This dog won't hunt. That's a reference to the politics of it."

Yet the unfolding Enron case has already set off a frenzy of finger- pointing among Republicans, some of whom have raised questions about the role of Paul H. O'Neill, the Treasury secretary, and Donald L. Evans, the Commerce secretary.

One senior adviser to the White House said: "The administration wanted this to be the week of the president's bipartisan education bill and continued success in the war in Afghanistan and beginning of a pivot to the State of the Union. I don't think the Sunday shows are going to spend a lot of time talking about the education bill. Do you? It's all Enron all the time now."

Another adviser to the White House said that while the accusations from some Democrats were overheated, he feared that "nothing is going to keep people from frothing about this, and it gets the president off message and makes him reactive."

Some Democrats who worked in the Clinton administration and endured years of scandals were privately celebrating the latest turn for Mr. Bush.

Geoffrey Garin, a Democratic pollster, said the Enron case could be beneficial as his party's candidates make the case this fall that Republicans are a party of special interests and big business.

"This is a story about a powerful and well-connected corporation hurting average people and it goes to the heart of how voters see the differences between Republicans and Democrats," Mr. Garin said. He conducted a nationwide poll last week, he said, which found that "already over 60 percent of the electorate know about the Enron situation."

An element of the Democrats' strategy is to depict the Democrats as the only party willing to pass laws to protect workers at companies like Enron.

Gov. Jeanne Shaheen of New Hampshire, a Democrat, framed it as an economic matter. "It's a potentially big issue," she said. "Everyone who has watched what's happened to the employees of Enron who have lost all their retirement savings while management cashed out is very concerned."

Enron Contributed to Both Parties

By Christopher Newton
Associated Press Writer
Saturday, January 12, 2002; 2:17 AM

WASHINGTON — More than 250 members of Congress – Democrats as well as Republicans – received political contributions from now-bankrupt Enron and at least 15 high-ranking Bush administration officials owned stock in the energy company last year, according to two government watchdog groups.

In Congress, 71 senators and 187 House members received political contributions between 1989 and 2001, according to an analysis of federal election documents by The Center for Responsive Politics.

The top recipients in the Senate are from Texas, where Enron is based. Republican Sen. Kay Bailey Hutchison topped the list receiving $99,500 over the period. Sen. Phil Gramm was second, with $97,350.

Sen. Conrad Burns, R-Mont., accepted $23,200 during the period and Sen. Charles Schumer, D-N.Y., who sits on two committees planning hearings on the collapse of Enron, accepted almost $23,000 in contributions, according to the report.

Of the 10 House members who received the most money from Enron, six were Democrats and most were from Texas. The top recipients were both Democrats, Rep. Ken Bentsen, with $42,750, and Rep. Sheila Jackson Lee, with $38,000.

Rep. Joe L. Barton, R-Texas, got $28,909, and fellow Texas Republican Rep. Tom DeLay got $28,900.

Rep. John Dingell, D-Mich., was 10th on the list, receiving $9,000. Dingell is the ranking Democrat on the House Energy and Commerce Committee, a panel with jurisdiction over the Enron case.

The Enron stockholders included Defense Secretary Donald H. Rumsfeld, senior Bush adviser Karl Rove, deputy EPA administrator Linda Fisher, Treasury Undersecretary Peter Fisher and U.S. Trade Rep. Robert Zoellick.

Army Secretary Thomas White, who was not included in the watchdog analysis of administration officials, was Enron's vice chairman before his assuming his Pentagon post and owned between $50 million and $100 million worth of stock.

In addition to the Bush officials who owned Enron stock, at least two officials had professional ties to Enron, according to an analysis of financial disclosures by The Center for Public Integrity.

White House economic adviser Lawrence Lindsey served as a consultant to Enron when he was managing director of Economic Strategies Inc., a consulting firm. Zoellick also served on the advisory council, earning $50,000 a year.

The report did not specify which officials sold their stock before Enron's financial collapse in December, but at least two, Rove and White, have disclosed that they did. Enron shares, which traded as high as $83 last year, are now worth less than $1.

White, whose stock was valued between $50 million and $100 million, announced that he sold his stock before taking his post with the Army last year. Rove sold his shares, worth between $100,000 and $250,000, early last year to comply with federal ethics rules.

On the Net:

Center for Public Integrity: http://www.public-i.org/index.htm

Congressional Report: http://www.cnsnews.com/specialreports/2002/enron2.asp

White House Blunts Enron Fallout

By H. Josef Hebert
Associated Press Writer
Saturday, January 12, 2002; 1:50 AM

WASHINGTON — As Congress revs up its investigation into Enron, the White House is scrambling to blunt the political fallout, insisting no favors were given to the fallen energy company despite numerous contacts between its executives and high-ranking administration officials.

As the Bush administration tries to distance itself from the Enron debacle, it also acknowledges that Enron had frequent and unusually free access to some of the administration's most senior officials including those at the Treasury, Commerce and Energy departments.

As the company spiraled toward collapse last fall, Enron President Lawrence "Greg" Whalley repeatedly telephoned Treasury's undersecretary for domestic finance, Peter Fisher, the department said.

Enron spokesman Mark Palmer said the calls in late October and early November "were not about trying to improve our credit rating" nor to seek financial help, but to discuss energy trading matters.

But Treasury spokeswoman Michele Davis said Fisher from the conversations "inferred he was being asked to encourage the banks to extend credit" but did not intervene.

Fisher also had been contacted by former Treasury Secretary Robert Rubin, a Democrat, who had sought Fisher's intervention on behalf of Enron, according to Davis and confirmed by a Rubin spokesman, Michael Schlein.

Rubin is now chairman of the executive committee of Citigroup Inc., which along with other banks lent hundreds of millions of dollars to Enron, hoping to keep it afloat.

About the same time, the company's chairman, Kenneth Lay, one of President Bush's biggest campaign contributors, also had several phone conversations with members of the Bush Cabinet.

He telephoned Treasury Secretary Paul O'Neill and Commerce Secretary Don Evans and received a phone call from Energy Secretary Spencer Abraham.

O'Neill said Thursday that Lay called to give a heads up and not to ask for any favors.

Abraham telephoned Lay "to ask about the situation after he read news reports about the company's financial problems," said Jeanne Lopatto, the Energy Department's spokeswoman. She described the calls as "general" in nature and said Lay "didn't make any requests, nor did the secretary offer any assistance."

Across the government Friday officials, at direction from the White House, poured through telephone logs and records of any contacts between the administration and Enron. In none of the cases was there any special favors granted the Houston company, officials said.

Referring to suggestions of any political improprieties, "this dog won't hunt," declared White House press secretary Ari Fleischer.

Senior Bush adviser Karl Rove sought to minimize the president's relationship with Enron and Lay.

"The president knows him. He is a friend. But the idea that he is a friend in the sense that this is a guy who's a close intimate is just ludicrous," Rove said in an interview with The Associated Press.

Bush has said he saw Lay twice during 2001, but that they did not discuss Enron's finances.

But Enron's reach runs across party lines in Washington.

More than 250 members of Congress received political contributions from Enron between 1989 and 2001 and they included both Republicans and Democrats, according to an analysis by the Center for Responsive Politics.

Six committees of Congress have begun investigations into Enron's bankruptcy with a number of lawmakers on the committees also recipients of Enron campaign money.

Noting the repeated contacts between Enron and members of the Bush Cabinet, Rep. Henry Waxman D-Calif., asked Friday in a letter to O'Neill and Evans "why the administration apparently did nothing to mitigate the harm ... to thousands of (Enron) employees and shareholders."

Thousands of workers have lost their jobs and their retirement savings as a result of Enron's bankruptcy on Dec. 2 and the drop in its stock value. Enron stock plummeted from a high of $90 a little over a year ago to less than $1.

Congressional committees as well as the Justice and Labor departments want to know why many senior Enron executives and board members sold their stock when it was still valuable, but workers were barred from selling stock in their 401(k) retirement funds.

Among the other Enron developments:

-A Senate Governmental Affairs subcommittee said it had subpoenaed Enron's accounting firm, Arthur Andersen LLP, for all documents related to the destruction of Enron records. Anderson acknowledged Thursday that Enron documents had been destroyed.

-The Justice Department appointed the head of the department's fraud section, Joshua Hochberg, as acting U.S. attorney for the Enron case.

-The House Energy and Commerce Committee demanded that Arthur Andersen LLP provide all Enron-related records by Monday. "We're knee-deep in our investigation," said committee spokesman Ken Johnson.

Enron Asked for Help From Cabinet Officials

CEO Sought Intervention Before Bankruptcy

By Dana Milbank and Peter Behr
Washington Post Staff Writers
Friday, January 11, 2002; Page A01

Bush administration officials yesterday disclosed that the top official of Enron Corp., one of President Bush's biggest campaign donors, sought help from the administration to avoid a bankruptcy filing in the weeks before the giant energy concern collapsed last year, wiping out the pensions of thousands of workers.

Enron Chief Executive Kenneth L. Lay had conversations about his company's dire financial situation with Treasury Secretary Paul H. O'Neill and Commerce Secretary Donald L. Evans. Lay told Evans, Bush's former campaign manager, that he would welcome help stopping a private credit rating agency from downgrading Enron debt -- an event that could force Enron into bankruptcy.

Administration officials said yesterday that Evans did not intervene. Enron filed for bankruptcy protection on Dec. 2, the largest such case in U.S. history.

Also yesterday, Enron's auditor, Arthur Andersen LLP, informed the government that employees at the accounting firm had destroyed a "significant" number of Enron-related documents -- thousands of records, according to congressional investigators. The Securities and Exchange Commission took the unusual step of saying it is widening its investigation of Enron . to include the destruction of those records.

As the controversy grew yesterday, Attorney General John D. Ashcroft and a top aide recused themselves from the Justice Department's just-announced criminal investigation into Enron's collapse. Ashcroft's political committees received $57,499 from company executives in the last election cycle. The U.S. attorney's staff in Enron's home town of Houston also recused itself because of Enron ties.

The developments significantly expanded the controversy over Enron and its ties to the administration at a time when the White House has sought to limit the political damage. Earlier this month, the White House disclosed that the task force that developed the Bush administration's energy policy last year met six times with Enron officials but said the company's finances were not discussed.

Until yesterday, White House press secretary Ari Fleischer said there was "nobody here that I'm aware of" at the White House who had been informed earlier. The White House said O'Neill and Evans did not notify Bush until yesterday of contacts with Lay about Enron's troubles.

Bush yesterday commissioned task forces to provide recommendations to reform pension laws "to make sure that people are not exposed to losing their life savings as the result of a bankruptcy" and "to analyze corporate disclosure rules and regulations."

On Capitol Hill, Republicans joined Democrats in calling for probes into Enron. The Senate Governmental Affairs Committee will hold a hearing on Jan. 24 and the Senate Commerce, Science and Transportation Committee will begin hearings on Feb. 4. The House Energy and Commerce Committee, whose investigators discovered Andersen employees had destroyed Enron documents, will have hearings in "early February," a committee spokesman said.

The White House faces increased pressure from Congress to disclose all meetings its energy policy task force had with energy industry officials last year. Congress's General Accounting Office said it would decide within the month whether to take the administration to court over its refusal to provide information on who the task force met with.

Lay's name appeared on early lists of possible Bush cabinet secretaries, and he was one of the Bush "Pioneers" who raised at least $100,000 for the presidential campaign. According to the Center for Public Integrity, a watchdog group, Lay contributed $44,000 to Bush's presidential campaign, part of $220,700 in contributions to Bush's presidential efforts by top Enron executives. Between 1999 and 2001, Enron made $1.9 million in unregulated "soft money" contributions, mostly to Republicans.

The president yesterday said he "never discussed with Mr. Lay the financial problems of the company." Bush added that his "administration will fully investigate issues such as the Enron bankruptcy to make sure we can learn from the past and make sure that workers are protected."

Administration officials said Lay discussed Enron's plight with O'Neill on Oct. 28 and Nov. 8, and Evans on Oct. 29. On Oct. 16, Enron reported a $638 million loss and the first in a series of damaging errors in its accounting.

Fleischer said Lay called O'Neill "to advise him about his concern about the obligations of Enron." Lay suggested the case of Long-Term Capital Management LP could be a model. In 1998, that firm, a hedge fund, benefited from a government-coordinated bailout by other financial institutions after losing more than $4 billion in trading of the complex financial instruments known as derivatives.

"Long-Term Capital was unable to meet its obligations and headed to bankruptcy, and he wanted Secretary O'Neill to be aware of that, the Long-Term Capital experience as a guide," Fleischer said. "Secretary O'Neill then contacted Undersecretary [Peter R.] Fisher, Undersecretary Fisher looked at that and concluded there would be no more impact on the overall economy." Fisher had been involved in the Long-Term Capital bailout as a Federal Reserve official.

O'Neill said he considered his conversations with Lay "business as usual." O'Neill told CNN: "I get calls every day from the big players in the world. Enron was the biggest trader of energy in the world."

In addition, Fleischer said, Lay brought to Evans's attention "the problems with the obligations and the bankruptcy. He was having problems with his bond rating and was worried about its impact on the energy sector."

Commerce Department spokesman Jim Dyke said Lay indicated "he would welcome any support the secretary thought was appropriate" persuading Moody's Investors Service not to downgrade Enron's debt. Evans talked to his general counsel and conferred with O'Neill over lunch on Oct. 29, then decided not to act, Dyke said.

Evans told CNBC Lay did not specifically ask him to call Moody's: "He said, 'I want you to know that Moody is currently reviewing it. If there's any kind of support you could give us, we would welcome that.' "

When Lay approached Evans, Moody's was considering downgrading billions of dollars in Enron debt, an action that financial analysts said would drive Enron's stock price down further and cut deeply into its trading business. On Nov. 28, Moody's and other rating services downgraded Enron's bonds to "junk" status, forcing it into bankruptcy court.

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WAIVER: Legitimate news media inquiry on major national story.
ADDRESS: NY Daily News 1215 17th St. NW, 3rd Fl. Wash. DC 20036
DOCDESC: To Whom it May Concern: I am writing under the FOI/PA to request any and all information regarding your department's dealings with and about Enron Corp. since 1998 and to the present. I intend this to include: information about any and all correspondence and communication between Enron and OPIC and applications by Enron to OPIC I am including applications, letters, memos, emails and phone messages from 1998 to the present, including, without limitation, any and all meetings between officials and/or personnel of your department and officials and/or personnel of the White House and/or National Security Council. I include in this, but do not limit the above to, any meetings involving above mentioned OPIC, White House and National Security Council officials and or personnel that occurred on or after June 1, 2001, regarding Enron's investment, involvement or exposure to transactions in or with in India, and other matters. I am also requesting under FOI/PA any and all information about Enron provided to other organizations under FOI/PA previously or concurrently to this request. As a member of the legitimate news media, I am requesting a fee waiver. If this is denied, I will pay reasonable costs, but please contact me at the below phone numbers if fees mount up over $100. Please provide any and all information as it is located instead of waiting whatever length of time is needed to complete an comprehensive search. Please contact me, Tim Burger, at 202-467-6670 or 202-255-9134 when items are ready or with any questions. My mailing address is: Tim Burger NY Daily News 1215 M St NW 3rd Fl. Wash. DC 20036 Sincerely, TIM BURGER Washington Correspondent, NY Daily News Jan. 14, 2002
EMAILTO: FOIA-CENTRAL@hq.doe.gov
COMMENTS: CORRECTED MAILING ADDRESS IN THIS VERSION!!!!
CONTYPES: Contract
MEDIANAME: NY Daily News
MEDIATYPE: Newspaper
OTHERDESC: newsgathering
DESCRIPTION: media
MEDIATYPEOTHER:

JAN 15 2002

SCIENTIFIC/EDUCATIONAL ~~NEWS MEDIA~~
100 FREE PAGES

Sheila

Overseas Private Investment Corporation

Enron ←

1 Energy Related Project in India (DABHOL)

7A

Department of Energy

Washington, DC 20585

January 16, 2002

Mr. Tim Burger
NY Daily News
1215 17th Street, NW, 3rd Floor
Washington, DC 20036

Re: F2002-00028

Dear Mr. Burger:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for information that pertains to the Enron Corporation from 1998 to the present.

Your request has been assigned to the Office of the Executive Secretariat and the Office of Security Affairs to conduct a search of their files. Upon the completion of these searches and the review of any responsive documents that may be found, we will provide a response to you.

You have requested a waiver of any fees to process the request. For purposes of assessment of fees, you have been categorized under the DOE regulation implementing the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9 (b)(3), as a "news media" requester. In this category, you will be charged only for duplication costs and will be provided the first 100 pages at no cost.

You also state in your letter that you agree to pay up to $100.00 if the fee waiver request is denied. The FOIA, however, provides that "[d]ocuments shall be furnished without any charge or a reduced charge below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government and is not primarily in the commercial interest of the request." See 5 U.S.C. 552 (a)(4)(A)(iii).

The DOE has implemented this statutory standard for fee waivers or reduced fees in its regulation at 10 CFR 1004.9(a). The regulation sets forth the following factors that are considered by the DOE in applying the criteria:

(1) The subject of the request: Whether the subject of the requested records concern "the operations or activities of the government."

(2) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) The contribution to an understanding by the general public of the subject likely to result from disclosure;

78

(4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(6) The primary interest in disclosure: Whether the magnitude or the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

If you would like your request for a fee waiver to be considered, please submit additional information to Ms. Sheila Jeter of my staff that addresses these factors. Your submission should be received by January 28, 2001. If we do not receive the information by this date, we will consider your statement to pay up to $100.00 for costs incurred as your assurance to pay fees associated with this request.

The above referenced number has been assigned to your request and you should refer to it in any correspondence to the Department. If you have any questions about the processing of your request, you may contact Ms. Jeter on (202) 586-5061.

I appreciate the opportunity to assist you, and thank you for your interest in the Department.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

FOIA_Folder_Profile

Control # F2002-00034 **Suffix** **Name** FOIA Request from Jeff Bliss, dated Jan. 22, 200

Corp. Control # 0201220002 **Action Office #**

Subject Text
Correspondence about, to or from Enron Corp. or any of its subsidiaries, from Jan. 1, 1999 to present

Assigned To
Unassigned Not Yet Assigned

Final Action

Special Instructions

Field Office HEADQUARTERS
RIDS Information Indefinite
Requestor Type Scientific
Folder Trigger FOIA Req Noncent
FOIA Contact JETERS
Jeter, Sheila 202 586-5061
Program Contact
Date Received 1/22/02
Correspondence Date 1/22/02
Int. Resp. Date
Program Completion date
Action Completion Date

FOIA Exemptions
☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8
☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9
☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions
☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

Department of Energy

Washington, DC 20585

January 24, 2002

Mr. Jeff Bliss
Bloomberg News
1399 New York Avenue, NW
Washington, DC 2002-4711

Re: F2002-00034

Dear Mr. Bliss:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for (1) all correspondence that pertain to the Enron Corporation and Special Purpose Entities (SPE), LJM, Cayman LP, LJM2 Co-Investment LP, Joint Energy Development Investments LP, Chewco Investments LP, Raptor, Osprey, and Big Doe from January 1, 1999 to the present; and (2) all Freedom of Information Act requests that pertain to the Enron Corporation since June 1, 2001.

In a telephone conversation with Ms. Sheila Jeter of my staff on January 22, 2002, you modified the request to limit the search to the Office of the Secretary, the Office of the Deputy Secretary, and the Office of the Under Secretary of Energy.

The request has been assigned to the Office of the Executive Secretariat to conduct a search of its files. Upon the completion of the search and the review of any responsive documents that may be found, we will provide a response to you.

Your letter requested that the Department waive any fees incurred to process the request. I have considered the information that you have provided in your letter and determined that it satisfies the criteria considered in making a determination to waive fees. Fees incurred to process the request will be waived.

The above referenced number has been assigned to your request and you should refer to it in any correspondence to the Department. If you have any questions about the processing of your request, you may contact Ms. Jeter on (202) 586-5061.

I appreciate the opportunity to assist you, and thank you for your interest in the Department.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

8A

FOI-00034

January 22, 2002

Abel Lopez
FOI Director
Department of Energy
ME-73
1000 Independence Avenue SW
Washington, DC 20585

JAN 22 200202

FOIA REQUEST

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
-100 FREE PAGES

Dear FOI Director:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. s. 552, I request access to and copies of all correspondence about, to or from Enron Corp. or any of its subsidiaries, from Jan. 1, 1999 to present. This should include but is not limited to internal agency communications, letters from or to the company or its representatives from the secretary or other department personnel.

I am requesting any correspondence or other information on LJM Cayman LP, LJM2 Co-Investment LP, Joint Energy Development Investments LP, Chewco Investments LP, Raptor, Osprey, Big Doe and other special purpose entities and partnerships of Enron and its subsidiaries. Internal department communications on views on Enron and the deregulation of the electricity industry and the effect of deregulation on electricity prices are requested, as well.

I am also requesting copies of any other Freedom of Information Act requests regarding Enron that the agency has received since June 1, 2001.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed $150. However, please notify me prior to your incurring any expenses in excess of that amount.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on Enron Corp. that is of current interest to the public because of the recent financial collapse of the company. This information is being sought on behalf of Bloomberg News for dissemination to the general public.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. I can be reached at (202) 624-1975.

I look forward to your reply within 20 business days, as the statute requires. Thanks very much for your assistance.

Sincerely,

Jeff Bliss
Bloomberg News

Sheila

SB

BLOOMBERG, L.P.

FACSIMILE TRANSMITTAL SHEET

TO: Abel Lopez	FROM: Jeff Bliss
COMPANY: Dept. of Energy	DATE: 1/22/02
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER:	SENDER'S PHONE NUMBER: 202.624.1800
RE:	SENDER'S FAX NUMBER: 202.624.1300

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Please call me at 202-624-1975 if you have any questions.

Jeff Bliss
Bloomberg

*** IF ANY PART OF THIS TRANSMISSION IS RECEIVED IN POOR CONDITION OR MISSING PAGES, PLEASE CALL THE VERIFYING NUMBER FOR RETRANSMISSION.

1399 NEW YORK AVE., N.W. WASHINGTON DC 20005-4711

80

FOIA_Folder_Profile

Control # F2002-00044 **Suffix** **Name** FOIA Request from Pete Yost, dated Jan. 29, 200

Corp. Control # 0201300001 **Action Office #**

Subject Text
Energy Department documents, records, memos, and any other written materials covering the years 2000 and 2001 on Enron Corp.

Assigned To
ME Office of Management, Budget a

Final Action

Special Instructions

Field Office HEADQUARTERS
RIDS Information Indefinite
Requestor Type Scientific
Folder Trigger FOIA Req Noncent
FOIA Contact JETERS
Jeter, Sheila 202 586-5061
Program Contact
Date Received 1/30/02
Correspondence Date 1/29/02
Int. Resp. Date 1/30/02
Program Completion date
Action Completion Date

FOIA Exemptions
☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8
☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9
☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions
☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

9

Jan. 29, 2002

Abel Lopez
Director FOIA/Privacy Act Division
U.S. Department of Energy
1000 Independence Ave. S.W.
Room G-051
Washington, D.C. 20585
Phone: 202 586 5955
Fax: 202 586 0575

JAN 30 2002 01

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
-100 FREE PAGES

Dear Ms. Lopez,

I am a reporter with The Associated Press and this is a request for documents under the Freedom of Information Act.

I am seeking all Energy Department documents, records, memos and any other written materials covering the years 2000 and 2001 on Enron Corp.

I would appreciate it if you could contact me by phone when the request is complete so that I may send a messenger to pick up the materials rather than having them sent through the mail.

My telephone number is 1 202 776 9464. My fax number is 1 202 776 9825 or 1 202 776 9861. Please telephone me before sending any fax. Thank you for your consideration of my request.

Sincerely,

Pete Yost

Pete Yost
The Associated Press
2021 K St. N.W.
Washington, D.C. 20006

9A

Department of Energy
Washington, DC 20585

January 30, 2002

Pete Yost
The Associated Press
2021 K St. NW
Washington, D.C. 20006

F2002-00044

Re: Documents, records, memoranda and any other written materials on Enron Corp.

Dear Mr. Yost:

Thank you for the request for information that you made to the Department of Energy under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Your letter was received in this office today, and has been assigned a controlled number, F2002-00044. Since we receive several hundred requests a year, please use this number in any correspondence with the Department concerning your request.

We are reviewing your letter to determine if it addresses all of the criteria of a proper request under the FOIA and the Department's regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004. We will send you a subsequent letter informing you if we need additional information or stating where the request has been assigned to conduct a search for responsive documents.

I appreciate the opportunity to assist you with this matter. If you have any questions about this letter, please contact this office on (202) 586-6025.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

Jan. 30, 2002

Abel Lopez
Director FOIA/Privacy Act Division
U.S. Department of Energy
1000 Independence Ave. S.W.
Room G-051
Washington, D.C. 20585
Attention: Sheila Jeter
Phone: 202 586 5955
Fax: 202 586 0575

Dear Sheila,

Pursuant to our discussion regarding my request for documents concerning Enron, you will search the offices of the secretary of energy, the deputy secretary of energy and the undersecretary of energy.

I am requesting a waiver of any fees that may be associated with fulfilling my request. Enron is a subject of intense public interest and I intend to write news stories based on documents produced under this Freedom of Information Act request. If you have any further questions, my phone number is 202 776 9464.

Sincerely,

Pete Yost

Pete Yost
The Associated Press

9C

FOIA_Folder_Profile

Control # F2002-00076 **Suffix** **Name** FOIA Request from Robert W. Blunt, dated Dec. 1

Corp. Control # 0202140001 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type Other-Individual

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

All correspondence, schedules, memos and all other public documents that may have been filed with the Department of Energy--between the dates of January 21, 2001 and December 17, 2001-from, to or regg

Assigned To

ME Office of Management, Budget a

Program Contact Sheila Jeter

Final Action

Date Received 2/14/02

Correspondence Date 12/17/01

Special Instructions

Int. Resp. Date

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

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10

Department of Energy
Washington, DC 20585

February 19, 2002

Mr. Robert W. Blunt

Re: F2002-00076

Dear Mr. Blunt:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for documents that pertain the the Enron Corporation and you listed specific names of employees and companies affiliated with the Enron Corporation.

Your request has been assigned to the Office of the Executive Secretariat to conduct a search of its files for responsive documents. Upon completion of the search and the review of any documents found, we will provide a response to you.

You also stated in your letter that you agree to pay fees up to $100 to process the request. For purpose of assessment of fees, you have been categorized under the DOE regulation implementing the FOIA at Title 10, Code of Federal Regulations, Section 1004.9(b)(4), as an "other" requester. In this category, you are entitled to two free hours of search and 100 pages at no cost.

The above referenced number has been assigned to the request and you should refer to it in correspondence to the Department concerning this matter. If you have any questions about the processing of your request please contact Ms. Sheila Jeter of my staff on (202) 586-5061.

I appreciate the opportunity to assist you.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

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"OTHER" 2 HOURS SEARCH FREE; 100 FREE PAGES

December 17, 2001

FEB 14 2002

FOIA Office
MA 73
Department of Energy
1000 Independence Avenue, NW
Washington, DC 20585
Fax: (202) 586-0575

To Whom It May Concern:

Under the provisions of the Freedom of Information Act, 5 U.S.C. 552, I am requesting access to all correspondence, schedules, memos and all other public documents that may have been filed with the Department of Energy -- between the dates of January 21, 2001 and December 17, 2001 -- from, to or regarding the following:

1. Enron Corporation, Enron Oil and Gas Co., Enron North America or Enron Wind Co.;

All correspondence with employees or representatives of Enron Corporation, Enron Oil and Gas Co., Enron North America or Enron Wind Co. including, but not limited to:

1. Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Kenneth L. Lay, Charles A. Lemaistre, John Mendelsohn, Paulo V. Ferraz Pereira, William C. Powers, Jr., Frank Savage, John Wakeham, Herbert S. Winokur, Jr., Lawrence "Greg" Whalley, Mark A. Frevert, Raymond M. Bowen, Jr., Michael Brown, Richard B. Buy, Richard A. Causey, Dave Delainey, James V. Derrick, Jr., Janet Deitrich, James Fallon, Mark E. Haedicke, Stanley C. Horton, Steven J. Kean, Mark E. Koenig, John J. Lavorato, Mike S. McConnell, Jeffrey McMahon, Jeffrey A. Shankman, John Sherriff;

2. Commonwealth Group, Fontheim International, Michael Lewan Co, Bracewell & Patterson, Mindbeam, Quinn Gillespie & Associates LLC, Sideview Partners INC, Wyatt Tarrant & Combs LLP, Razer Consulting, P.D., Gardere Wynne Sewell LLP;

3. Christopher Tung, Michael Lewan, Anne Saunders, Gene E. Godley, Michael L. Pate, Scott H. Segal, Marc C. Hebert, Ed Bethune, Jim Chapman, D. Michael Stroud, Jr., Charles L. Ingebreston, Jeffrey D. Waikles, Marc Racicot, Robert F. Housman, Larry Decker, Susan Landwehr, Chris Long, Gregory C. Simon, Kristan Van Hook, Ann Morton, Bruce Andrews, Ed Gillespie, Dave Lugar, Ashley Meece, John Hayes, Charles W. Bone, Paul Frazer, Patricia Dunmire Bragg, Rayanne Tobey.

For your purposes in filling this request, please consider me under the category of "all other organizations," as defined by the Freedom of Information Act. If there are any fees for copying or searching for the records I have requested, please inform me of the cost prior to searching or copying, and only if the total exceeds $100.

Sheila 10B

If all or any part of this request is denied, please cite the specific exemption which you believe justifies your refusal to release the information and inform me of your agency's administrative appeal procedures available to me under the law.

Please provide all information on a rolling basis if possible. I appreciate your handling of this request as quickly as possible and I look forward to hearing from you within 10 working days, as the law stipulates.

Sincerely,

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FOIA_Folder_Profile

Control # F2002-00080 **Suffix** **Name** FOIA Request from Tom Hamburger/The Wall Ste

Corp. Control # 0202140005 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Subject Text

Copies of all documents in Department of Energy's possession related to Communications since January 2001 related to Enron Corp. and Communications since January 2001 between Enron Corp. employees and

Requestor Type News Media

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Assigned To

Unassigned Not Yet Assigned

Program Contact

Final Action

Date Received 2/14/02

Correspondence Date 1/12/02

Special Instructions

DUPLICATE

Int. Resp. Date

Program Completion date

Action Completion Date 2/15/02

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

05

Tom Hamburger
Wall Street Journal
1025 Connecticut Ave.
Washington, D.C. 20036
202-862-9223

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
-100 FREE PAGES

January 12, 2002

Freedom of Information Officer
FOIA/Privacy Office
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

To Whom It May Concern:

Please consider this to be a request under the federal Freedom of Information Act.

I would like copies of all documents or other material in the Energy Department's possession related in any way to the following matters:

1. Communications since January 2001 related to Enron Corp. between members of Congress or their staffs and employees or officials of the executive branch or any independent federal agency.

2. Communications since January 2001 between Enron Corp. employees or officials and employees or officials of the executive branch or any independent federal agency.

Please consider "documents or other material" to include any and all formats, including but not limited to paper, electronic, audio and video.

Sheila 11A

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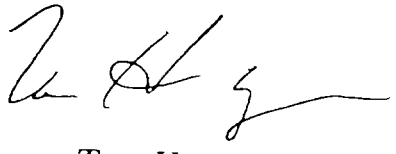
They also should be deemed to include any relevant emails, phone messages, calendar entries, letters, memos any other documents that either include the communications listed above or refer to such communications. Please consider "the executive branch or any independent federal agency" to include (but not be limited to) the Energy Department, any other cabinet agency, the Federal Energy Regulatory Commission, the Federal Reserve and its regional banks.

As this request relates to a newsworthy matter of great public interest, please expedite it to the extent possible. Please do not wait until all documents are retrieved to comply with this request; I would like all documents as soon as they are ready. The Wall Street Journal is willing to pay all reasonable and appropriate costs, but please contact me first if the estimated costs exceed $250.

In advance, thank you very much for your cooperation in this matter. If you have any questions, please feel free to contact me at 202-862-9223.

Sincerely,



Tom Hamburger
Staff Writer

FOIA_Folder_Profile

Control # F2002-00089 **Suffix** **Name** FOIA Request from Michael Tackett, dated Feb. 2

Corp. Control # 0202250008 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type News Media

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

All correspondence between the Enron Coporation and the offices of former Energy Secretaries Hazel O'Leary and Bill Richardson

Assigned To

Unassigned Not Yet Assigned

Program Contact

Final Action

Date Received 2/21/02

Correspondence Date 2/20/02

Special Instructions

Int. Resp. Date

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

12

13

Department of Energy
Washington, DC 20585

February 21, 2002

Mr. Michael Tackett
Chicago Tribune
1325 G Street, N.W.
Washington, DC 20005

Re: F2002-00089

Dear Mr. Tackett:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for all correspondence between the Enron Corporation and two former Secretaries of Energy, Hazel O'Leary and Bill Richardson.

Your request has been assigned to the Office of the Executive Secretariat to conduct a search of their files. That office is considered to be the office in the Department most likely to contain documents responsive to your request. Upon the completion of the search and the review of any responsive documents that may be found, we will provide you a response.

Your letter requested that the Department waive any fees incurred to process the request. I have considered the information you have provided in your letter and determined that it satisfies the criteria considered in making a determination to waive fees. For this reason, you will not be assessed any fees incurred to process the request.

The above referenced number has been assigned to your request and you should refer to it in any correspondence to the Department. If you have any questions about the processing of the request, you may contact Ms. Sheila Jeter on (202) 586-5061.

I appreciate the opportunity to assist you, and thank you for your interest in the Department.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

12A
A

FOIA-Central

From: mtackett@tribune.com
Sent: Wednesday, February 20, 2002 6:45 AM
To: FOIA-CENTRAL@HQ.DOE.GOV
Subject: EFOIA Request

FROM: mtackett@tribune.com
NAME: Michael Tackett
SUBJECT: EFOIA Request
CN:
FAX: 202.824.8302
FEE:
PHONE: 202.824.8253
WAIVER:
ADDRESS: Chicago Tribune 1325 G. St. NW #200 Washington, D.C. 20005
DOCDESC: I am seeking all correspondence between the Enron Corporation and the offices of former Energy Secretaries Hazel O'Leary and Bill Richardson. Such correspondence could relate either to specific policies or specific contracts. As a member of the media, seeking information in the public interest, I ask that reasonable fees be waived. Thank you for your cooperation.
EMAILTO: FOIA-CENTRAL@hq.doe.gov
COMMENTS:
CONTYPES: Contract
DOCUMENT: other
MEDIANAME: Chicago Tribune
MEDIATYPE: Newspaper
OTHERDESC:
DESCRIPTION: media
MEDIATYPEOTHER:

FEB 21 2002 07

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
-100 FREE PAGES

Sheila

12B

6

FOIA_Folder_Profile

Control # F2002-00094 **Suffix** **Name** FOIA Request from Judy Pasternak, dated Jan. 1

Corp. Control # 0202250013 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type News Media

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Copies of all correspondence to, from and regarding Kenneth Lay or Enron Corp., including memos, emails, meeting notes and letters, from Jan. 20, 2001 to presen

Assigned To

Unassigned Not Yet Assigned

Program Contact

Final Action

Date Received 2/25/02

Correspondence Date 1/11/02

Special Instructions

Duplicate of F2002-00020

Int. Resp. Date

Program Completion date

Action Completion Date 2/25/02

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

13

13

Los Angeles Times
WASHINGTON BUREAU
1875 EYE STREET NW, SUITE 1100, WASHINGTON DC 20006-5482

January 11, 2002

Department of Energy
Abel Lopez
Director, FOIA/PA Division, HR-73
1000 Independence Ave., S.W.
Washington, D.C. 20585
By fax (hard copy to follow)

FEB 25 2002 13

SCIENTIFIC/EDUCATIONAL/NEWS MEDIA
-100 FREE PAGES

Dear Mr. Lopez:

On behalf of the Los Angeles Times, and pursuant to the federal Freedom of Information Act, 5 U.S.C. s. 552, I request access to and copies of :

- Copies of all correspondence to, from and regarding Kenneth Lay or Enron Corp., including memos, emails, meeting notes and letters, from January 20, 2001 to the present. Also, copies of all phone logs that show calls to or from Kenneth Lay or any other Enron Corp. officials, lobbyists or representatives, and any notes made of conversations during such calls. Also, schedules showing meetings with any Enron Corp. officials, lobbyists or representatives.

I agree to pay reasonable duplication fees for the processing of this request. However, please notify me prior to your incurring any expenses in excess of $200. Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you cite the specific exemption of the act that justifies each deletion. I will also expect you to release all non-exempt portions of any redacted documents. I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

I look forward to your reply within 20 business days, as the statute requires.

Judy can be reached directly at 202-861-9250 or via e-mail at Judy.Pasternak@latimes.com. I can be reached at 202-861-9288 or Robert.Patrick@latimes.com . I look forward to your reply. Thank you.

Sincerely yours,

Judy Pasternak and Robert Patrick
Staff Writers

Sheila 13A

Department of Energy
Washington, DC 20585

February 25, 2002

Ms. Judy Pasternak
1875 Eye Street NW, Suite 1100
Washington, DC 20006-5482

F2002-00094

Re: Copies of all correspondence to, from, and regarding Kenneth Lay or Enron Corporation from January 20, 2001 to the present

Dear Ms. Pasternak:

Thank you for the request for information that you made to the Department of Energy under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Your letter was received in this office today, and has been assigned a controlled number, F2002-00094. Since we receive several hundred requests a year, please use this number in any correspondence with the Department concerning your request.

We are reviewing your letter to determine if it addresses all of the criteria of a proper request under the FOIA and the Department's regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004. We will send you a subsequent letter informing you if we need additional information or stating where the request has been assigned to conduct a search for responsive documents.

I appreciate the opportunity to assist you with this matter. If you have any questions about this letter, please contact this office on (202) 586-6025.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

132

FOIA_Folder_Profile

Control # F2002-00162 **Suffix** **Name** Referred from EOP for FOIA Request from Jim W

Corp. Control # 0203190004 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type News Media

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Any and all records of contacts between any USTR officials and Enron Corp. officials, including USTR Robert Zoellick, and/or people working on Enron's behalf since Jan. 20, 2001, the advent of the Bus

Assigned To

GC Office of the General Counsel

Program Contact

Final Action

Date Received 3/19/02

Correspondence Date 1/25/02

Special Instructions

Int. Resp. Date 3/21/01

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

REV

Jacqui Caldwell - Expedited Media FOIA request RE Enron and USTR

From: <jim.wolf@reuters.com>
To: <sharrison@ustr.gov>
Date: 1/25/2002 3:24 PM
Subject: Expedited Media FOIA request RE Enron and USTR

Ms. Sybia Harrison
FOIA Officer
Office of the U.S. Trade Representative
1724 F St. N.W. Room #217
Washington, D.C. 20508

MAR 19 2002 04
"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
100 FREE PAGES

January 24, 2002

Dear Ms. Harrison:

This is a request for U.S.T. R. documents related to Enron Corp. under the Freedom of Information Act.

As a reporter for Reuters, the international news agency, I am seeking expedited release in the public interest of:

-- Any and all records of contacts between any USTR officials and Enron Corp. officials, including USTR Robert Zoellick, and/or people working on Enron's behalf since January 20, 2001, the advent of the Bush administration.

-- Any records of responses by USTR officials to any Enron requests since Jan. 20, 2001. Please include the text of any e-mail messages as well as logs of any telephone conversations. .

-- Any records of deliberations by USTR officials on request from Enron since Jan. 20, 2001.

-- Any records of communications on behalf of Enron between USTR and any government or industry officials in India, Turkey, China, Venezuela and any other nation, since Jan. 20, 2001.

Reuters news agency is seeking these documents to inform the public. We are prepared to pay reasonable photocopying fees of $50 or more, subject to further consultation. In terms of priority, please note that we are most interested in documents sent to or signed by Mr. Zoellick. We would be happy to receive an initial delivery of any such Zoellick material, rather than wait for completion of the search we are requesting of all relevant 2001 agency records. Ideally, we'd like the older documents covered by this request to be made available to us in a second tranche, after the Zoellick-related material.

Thank you very much in advance for your consideration.

Jim Wolf
Correspondent
Reuters
1333 H. St. , N.W.
Washington, D.C. 20005
202-898-8402 (office)
202-277-5530 (cell)

N/A

Sheila F0004-00162 14A

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

February 27, 2002

Case File #: 02011892
02012505
02013006

Requestor: Blair Pethel, Bloomberg News
Jim Wolf, Reuters
James Grimaldi, The Washington Post

Mr. Abel Lopez
Director, FOIA /PA Division, MA 73
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Lopez:

The enclosed documents **(2)** were identified by the Office of the United States Trade Representative in responding to a Freedom of Information request from several Freedom of Information Act ("FOIA") requests broadly seeking records relating to Enron, its surrogates, representatives, etc. Since these documents originated within your agency, I am referring them to you for final disposition and direct response to the requesters. A copy of the original requests are enclosed. The requesters have been notified of this referral.

If you have any questions, please contact me or my assistant Jacqueline Caldwell at (202) 395-3419.

Sincerely yours,

Jacqueline Caldwell
for Sybia Harrison
FOIA Officer

Enclosures

14B

Department of Energy
Washington, DC 20585

March 21, 2002

Mr. Jim Wolf
Correspondent
Reuters
1333 H St., N.W.
Washington, DC 20005

Re: F2002-00162

Dear Mr. Wolf:

This is in further response to the request for information that you sent to the Office of the United States Trade Representative in the Executive Office of the President (EOP). You submitted the request under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for records that relate to Enron.

During the search for documents responsive to your request, the EOP located two documents that originated at the Department of Energy (DOE). The EOP transmitted the document to DOE to review for releasability and to provide our determination to you.

The two documents sent to DOE have been provided to the Office of the General Counsel for its review. Upon the completion of that review, a final response will be sent to you.

The above referenced number has been assigned to your request and you should refer to it in correspondence to the DOE about this matter. If you have any questions about the processing of the request, please contact Ms. Sheila Jeter of my staff on (202) 586-5061.

I appreciate the opportunity to assist you.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

140

FOIA_Folder_Profile

Control # F2002-00134 **Suffix** **Name** FOIA Request from Tadd Lascari/CBS News, dat

Corp. Control # 0203060005 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type News Media

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Documents relating to the Enron power plant in Dabhol in the Maharshtra state in India

Assigned To

ME Office of Management, Budget a

Program Contact

Final Action

Date Received 3/5/02

Correspondence Date 3/5/02

Special Instructions

Int. Resp. Date 3/8/02

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

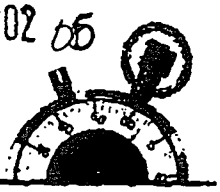
☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

MAR 0 6 2002 05



60 MINUTES

524 WEST 57th STREET, NEW YORK, NEW YORK 10019-2965 (212)975-2006

Department of Energy
Mr. Abel Lopez
FOIA Officer
1000 Independence Avenue, S.W.
Washington, D.C. 20585

"EXPRESS DELIVERY" -100 FREE PAGES [illegible] MEDIA

Re: Freedom of Information Act

Dear Mr. Lopez:

This is a request under the Freedom of Information Act. The request is that we would like a copy of all of the following documents:

Any documents relating to the Enron power plant in Dabhol in the Maharashtra state in India, i.e. communications, memos, emails, correspondence, etc.

We would appreciate a timely response from this agency to the FOIA and expedition of the documents because of what this issue means to the American people. This seemingly well-to-do company collapsed with out any warning. The collapse affected many people, from employees at Enron who lost their jobs and retirement funds to its investors in its stock. There are allegations that high ranking government employees from various departments may have used their influence to help Enron achieve business deals in the US and abroad. Now that Congress is involved and investigating the matter, the Enron collapse is an issue that is timely, newsworthy, and is of great interest to the American public.

Being a representative of the media from CBS News, this request is from a newsgathering standpoint and not intended for commercial use. This should enable you to determine my status and asses my fees for this request. I do not mind paying for this request, but would like to be informed of the amount before any such fees start to incur. Thank you for considering this request. We would like the documents to be sent as they become available.

Sincerely,

Tadd Lascari
CBS News
555 W. 57th Street
New York, NY 10019
(212)-975-8494 (ph)
(212)-975-0322 (f)

FOIA 00134 Sheila

15A

A

CBS

60 MINUTES
CBS NEWS

FAX TO: Mr. Abel Lopez

FROM: Todd Lasseri

NUMBER OF PAGES INCLUDING THIS PAGE 2.

TROUBLE NUMBER (212) 975-8494

Department of Energy
Washington, DC 20585

March 6, 2002

Mr. Tadd Lascari
CBS News
555 W. 57th Street
New York, NY 10019

F2002-00134

Re: Documents relating to the Enron power plant in Dabhol in the Maharshtra state in India

Dear Mr. Lascari:

Thank you for the request for information that you made to the Department of Energy under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Your letter was received in this office today, and has been assigned a controlled number, F2002-00134. Since we receive several hundred requests a year, please use this number in any correspondence with the Department concerning your request.

We are reviewing your letter to determine if it addresses all of the criteria of a proper request under the FOIA and the Department's regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004. We will send you a subsequent letter informing you if we need additional information or stating where the request has been assigned to conduct a search for responsive documents.

I appreciate the opportunity to assist you with this matter. If you have any questions about this letter, please contact this office on (202) 586-6025.

Sincerely,

Joan Ogburgh
for Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

15B

B.

Department of Energy
Washington, DC 20585

March 8, 2002

Mr. Tadd Lascari
CBS News
555 W. 57th Street
New York, NY 10019

RE: F2002-00134

Dear Mr. Lascari:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for documents relating to the Enron power plant in Dabhol in the Maharashtra state in India.

We have received several FOIA requests for records relating to Enron and a search of agency files has been conducted for documents responsive to these requests. Documents were identified during the search that are responsive to your request. At this time, the responsive records are under review for release pursuant to the FOIA. Upon completion of the review of the documents determined to be responsive to the request, I will provide a response to you.

The above referenced number has been assigned to the request and you should refer to it in any correspondence to the DOE about this matter. If you have any questions about the processing of the request, please contact Ms. Jeter on (202) 586-5061.

I appreciate the opportunity to assist you.

Sincerely,

for Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

15C

FOIA_Folder_Profile

Control # F2002-00163 **Suffix** **Name** Referred from EOP for FOIA Request from Blair F

Corp. Control # 0203190005 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type News Media

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Copies of all correspondence ath the Office of the U.S. Trade Representative about, to or from Enron Corp. or any of its subsidiaries, from June 1, 2001 to present

Assigned To

ME Office of Management, Budget a

Program Contact

Final Action

Date Received 3/19/02

Correspondence Date 1/18/02

Special Instructions

Int. Resp. Date 3/21/02

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

16

16

Rec'd

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ZURICH

January 18, 2002

MAR 19 2002 05

"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
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Sybya Harrison
FOI Officer
Office of the U.S. Trade Representative
600 17th St. N.W.
Washington, DC 20508
(202) 395-3419
fax (202) 395-9458

FOIA REQUEST

Dear FOI Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. s. 552, I request access to and copies of all correspondence at the Office of the U.S. Trade Representative about, to or from Enron Corp. or any of its subsidiaries, from June 1, 2001 to present.

This should include but is not limited to internal agency communications including emails, memos and other exchanges; and letters, emails, memos and other exchanges from or to the company or its representatives. I am also requesting, going back to June 1, copies of the appointment logbooks of the U.S. Trade Representative, the associate U.S. Trade Representative, the deputy U.S. Trade Representatives and the assistant U.S. Trade Representatives, as well as the USTR chief of staff and legal counsel; and copies of any other Freedom of Information Act requests regarding Enron that the agency has received since June 1.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed $150. However, please notify me prior to your incurring any expenses in excess of that amount.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on Enron Corp. that is of current interest to the public because of the recent financial collapse of the company. This information is being sought on behalf of Bloomberg News for dissemination to the general public.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. I can be reached at (202) 624-1981.

I look forward to your reply within 20 business days, as the statute requires. Thanks very much for your assistance.

Sincerely,

Blair Pethel
Bloomberg News

N/A

F2002-00163

16A

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

February 27, 2002

Case File #: 02011892
02012505
02013006

Requestor: Blair Pethel, Bloomberg News
Jim Wolf, Reuters
James Grimaldi, The Washington Post

Mr. Abel Lopez
Director, FOIA /PA Division, MA 73
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Lopez:

The enclosed documents **(2)** were identified by the Office of the United States Trade Representative in responding to a Freedom of Information request from several Freedom of Information Act ("FOIA") requests broadly seeking records relating to Enron, its surrogates, representatives, etc. Since these documents originated within your agency, I am referring them to you for final disposition and direct response to the requesters. A copy of the original requests are enclosed. The requesters have been notified of this referral.

If you have any questions, please contact me or my assistant Jacqueline Caldwell at (202) 395-3419.

Sincerely yours,

Jacqueline Caldwell
for Sybia Harrison
FOIA Officer

Enclosures

16B
6

Department of Energy
Washington, DC 20585

March 21, 2002

Mr. Blair Pethel
Bloomberg News
1399 New York Ave., N.W.
Washington, DC 20005-4711

Re: F2002-00163

Dear Mr. Pethel:

This is in further response to the request for information that you sent to the Office of the United States Trade Representative in the Executive Office of the President (EOP). You submitted the request under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for records that relate to Enron.

During the search for documents responsive to your request, the EOP located two documents that originated at the Department of Energy (DOE). The EOP transmitted the document to DOE to review for releasability and to provide our determination to you.

The two documents sent to DOE have been provided to the Office of the General Counsel for its review. Upon the completion of that review, a final response will be sent to you.

The above referenced number has been assigned to your request and you should refer to it in correspondence to the DOE about this matter. If you have any questions about the processing of the request, please contact Ms. Sheila Jeter of my staff on (202) 586-5061.

I appreciate the opportunity to assist you.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

16C

FOIA_Folder_Profile

Control # F2002-00164 **Suffix** **Name** FOIA Request from Marc P. Morano, dated Mar. 7

Corp. Control # 0203190006 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type News Media

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Copies of any and all documents and records pertaining to the Department of Energy and Enron Corporation for the years 1992-2001

Assigned To

ME Office of Management, Budget a

Program Contact

Final Action

Date Received 3/19/02

Correspondence Date 3/7/02

Special Instructions

Int. Resp. Date 3/20/02

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

17

17

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"SCIENTIFIC/EDUCATIONAL/NEWS MEDIA"
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Marc P. Morano
CNSNews.com
325 South Patrick St.
Alexandria, VA 22314
703-683-9733

March 7, 2002

ENERGY DEPARTMENT
Director, FOIA/PA Division, HR-73
1000 Independence Ave., S.W.
Washington, DC 20585
(202) 586-5955
fax (202) 586-0575

FOIA REQUEST

Dear FOI Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. s. 552, I request access to and copies of any and all documents and records pertaining to the Department of Energy and Enron Corporation for the years 1992-2001. Specifically any records pertaining to international energy collaboration, the Kyoto Protocol, the Export/Import bank and any correspondence with Enron's Kenneth Lay or John Palmisano.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed $75.00. However, please notify me prior to your incurring any expenses in excess of that amount.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on a series of articles on Enron's relationship with the Government in the 1990's, that is of current interest to the public because huge economic and political implications reside on Enron's business practices. This information is being sought on behalf of *CNSNews.com or Cybercast News Service* for dissemination to the general public.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

Please provide expedited review of this request which concerns a matter of urgency. As a journalist, I am primarily engaged in disseminating information.

The public has an urgent need for information about the details the US government's dealings with Enron Corporation. because Congressional investigations are presently taking place and the information is vital so our elected officials and the general public can conduct a proper investigation.

I certify that my statements concerning the need for expedited review are true and correct to the best of my knowledge and belief.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Very truly yours,

Marc P. Morano

Department of Energy
Washington, DC 20585

March 20, 2002

Mr. Marc P. Morano
CNS News
325 South Patrick Street
Alexander, VA 22314-3580

Re: F2002-00164

Dear Mr. Morano:

This is in further response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for records that pertain to DOE and the Enron Corporation from 1992 to 2001. You specifically asked for documents that pertain to international energy collaboration, the Kyoto Protocol, the Export/Import Bank, and Kenneth Lay or John Palmisano.

We have received several FOIA requests for records relating to Enron. We have conducted a search of the files of several offices at the Department for documents responsive to these requests. The offices that have been searched are the Office of the Executive Secretariat, the Office of the Secretary, Office of the Deputy Secretary, Office of the Under Secretary of Energy, the Office of Policy, and the Office of International Affairs.

Documents were identified during the search that are responsive to your request. At this time, the responsive records are under review for release pursuant to the FOIA. Upon completion of the review of the documents determined to be responsive, I will provide a response to you.

The above referenced number has been assigned to the request and you should refer to it in any correspondence to the DOE about this matter. If you have any questions about the processing of the request, please contact Ms. Sheila Jeter of my staff on (202) 586-5061.

I appreciate the opportunity to assist you.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

173

FOIA_Folder_Profile

Control # F2002-00236 **Suffix** **Name** FOIA request from Christopher Horner

Corp. Control # 0205010002 **Action Office #**

Field Office HEADQUARTERS

RIDS Information Indefinite

Requestor Type Other-Pub Int Gp

Folder Trigger FOIA Req Noncent

FOIA Contact JETERS

Jeter, Sheila 202 586-5061

Subject Text

Document relating to and /or citing Enron's direct and/or indirect lobbying of and influence upon the Clinto-Gore Administration and its actions and/or energy and/or environmental policies based in

Assigned To

ME Office of Management, Budget a

Program Contact SHEILA JETER

Final Action

Date Received 5/1/02

Correspondence Date 4/22/02

Special Instructions

Int. Resp. Date

Program Completion date

Action Completion Date

FOIA Exemptions

☐ B1 ☐ B4 ☐ B7A ☐ B7D ☐ B8

☐ B2 ☐ B5 ☐ B7B ☐ B7E ☐ B9

☐ B3 ☐ B6 ☐ B7C ☐ B7F

Privacy Act Exemptions

☐ J2 ☐ K1 ☐ K2 ☐ K5 ☐ K6

COMPETITIVE ENTERPRISE INSTITUTE

April 22, 2002

U.S. Department of Energy
FOIA/Privacy Act Division
1000 Independence Avenue, SW
Washington, D.C. 20585

MAY 01 2002 07

"OTHER" - 2 HOURS SEARCH FREE, 100 FREE PAGES
Pub Inf gp

Dear Information Officer,

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, please provide me, within 20 days, all documents of the sort described herein in DOE's possession meeting the provided subject matter description, be they internal and/or external communications, including but not limited to memoranda, electronic mail, entry logs, appointment and telephone records, or other correspondence, or other documentation referencing the covered subject matter. "External communication" intends electronic and other correspondence to other offices of a governmental entity or private entities, and other information sent outside DOE but not fairly characterized as "public," for example not including brochures or public, published reports.

This request seeks all such material though it may not refer to the specified subject matter entity, meeting or event in precisely the same fashion or description. For example, enumerated item 1, *infra*, requests any document referencing or otherwise pertaining to the August 4, 1997 Oval Office meeting including Enron CEO Ken Lay, President Clinton and Vice President Gore, whether described instead as, *e.g.*, between "industry leaders" and Messrs. Clinton/Gore, "Kyoto Preparation" or "October Conference on Climate Change preparation," or whether or not each, *e.g.*, specifically references Ken Lay, or cites no date or a different but chronologically proximate date.

These parameters permit satisfaction of our request consistent with FOIA by allowing or accounting for preparatory as well as follow-up documents, differing descriptions, recording errors, *etc.* Please do not construe the enumerated, sometimes detailed attempts at providing information sufficient to allow an accurate offering of documents as either exhaustive, or requiring a particular document to cite all such identifying information, but instead as illustrative.

As detailed, *infra*, **this letter constitutes a single request for documents relating to and/or citing Enron, and Enron's direct and/or indirect lobbying of and influence upon the Clinton-Gore Administration and its actions and/or energy**

1001 Connecticut Avenue, N.W. • Suite 1250 • Washington, D.C. 20036
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and/or environment policies based in whole or part on the theory of catastrophic man-made global warming, "climate change," or the Kyoto Protocol ("Kyoto").

Naturally, given the existence and nature of holdover personnel and other aspects of administration transitions the request includes documents up to the date this request is satisfied (see relevant Order in *Horner et al. v. USEPA*, D.D.C. 00-535). You will see, however, that this request details numerous specific sub-categories of documents satisfying this request, created on the basis of documents we have already obtained. The individual sub-categories or descriptions are merely intended to help focus EPA in its search and response. By the specificity of the descriptions, therefore, documents satisfying sub-categories 1-13 can be provided promptly.

Also given our provision of numerous specific sub-categories of documents satisfying the broader request, when responding to this request it would assist our communication if DOE identifies each document responsive to one of the 15 enumerated descriptions or sub-categories in this request by reference to the enumerated description which it satisfies. For example, if the Department Tracking Number is "HQ-RIN-02-1234", in future communications we will at the end cite that category to which we or a document refer, *e.g.*, "HQ-RIN-02-1234 (12)", referring to that described in sub-category 12, and request DOE do the same. If a document satisfies more than one sub-category, identifying any of those sub-categories suffices.

Clearly, as such this letter also requests that DOE not withhold documents beyond the statutorily prescribed date for satisfying this request on the grounds that the larger search, *i.e.*, to satisfy sub-category 14, has yet to be completed. Again, the specificity provided in 1-13, *infra*, should facilitate the search for and prompt provision of documents in discrete subdivisions.

This request covers only DOE's Washington DC office(s).

The relevant timeframe of this request is January 1, 1993, to present.

Subject Matter: Please provide all preparatory, follow-up, analytical or other documents addressing, citing or otherwise relating to the following entities, meetings or events. Any attachments cited or referred to by documents meeting each request are considered included in each request:

1) An August 4, 1997 meeting in the Oval Office between, *inter alia*, Enron Chief Executive Officer Ken Lay and President Clinton and Vice President Gore, addressing the theory of man-made climate change, possible Clinton Administration initiatives citing or based upon this theory, and the upcoming (December 1997) international treaty negotiations in Kyoto, Japan. Other CEOs scheduled to attend the meeting at issue in this request included those from BP (or British Petroleum), Alcoa, Solomon Brothers, Bethlehem Steel, American Electric Power (AEP), Pacific Corporation, Honeywell, and FMC. This meeting addressed the lobbying/policy desires of industry participants such as Enron and BP and is relevant for the Clinton Administration's response to same.

2) A late July 1997 meeting for certain invited industry participants hosted by the White House, including President Clinton and Vice President Gore, presenting scientific information and/or the Clinton Administration case or basis for policy action to address purported man-made climate change. This meeting addressed the lobbying/policy desires of industry participants such as Enron and BP and is relevant for the Clinton Administration's response to same.

3) Regional conferences in 1997-98 as part of an outreach campaign by the Clinton Administration on the theory of man-made climate change, including certain Cabinet officials. These meetings addressed the lobbying/policy desires of industry participants such as Enron and BP and are relevant for the Clinton Administration's response to same.

4) The October 1997 Clinton Administration/White House Conference on Climate Change hosted by President Clinton. This meeting addressed the lobbying/ policy desires of industry participants such as Enron and BP and is relevant for the Clinton Administration's response to same.

5) Meetings or deliberations of the President's Council on Sustainable Development. These meetings addressed the lobbying/policy desires of industry participants such as Enron and BP and are relevant for the Clinton Administration's response to same.

6) A February 20, 1998 meeting between, *inter alia*, Enron CEO Ken Lay and Energy Secretary Federico Pena. Others in attendance, who's records should also be specifically searched, include Dan Adamson (Special Assistant to Deputy Energy Secretary Betsy Moler), and L.G. Holstein (Pena Chief of Staff). This meeting addressed Enron's lobbying/policy desires regarding the Clinton Administration's approach to restructuring the electricity system, specifically legislative positions and strategies and whether to include "climate change" policies in any such effort, and is relevant for insight it may provide into the Clinton Administration's response to same.

7) Enron CEO Ken Lay's February 20, 1998 correspondence to President Clinton "to ask for [Clinton's] personal involvement in passing [electricity] legislation..." This letter addresses the lobbying/policy desires of industry participants such as Enron and is relevant for the Clinton Administration's response to same. Clearly, this description does not specifically seek the letter, but documents addressing, citing or otherwise relating to this correspondence, its request, and reception/impact.

8) The "**Clean Power Group,**" consisting of, *inter alia*, Enron, El Paso, Calpine, NiSource, PG&E National Energy Group, and Trigen Energy, coordinating with and/or served also by Environmental Defense or "ED", Natural Resources Defense Council ("NRDC"), Clean Air Task Force, Sierra Club, Mr. Joel Bluestein, and the following industry trade groups: "EPSA", INGAA, Gas Turbine Association, Solar Energy Industry Association, American Wind Energy Association, "NAESCO", American Gas Association, Business Council for Sustainable Energy, and U.S. Combined Heat and Power Association. This coalition addressed the lobbying/policy desires of industry

participants such as Enron and documents referencing them are relevant for the Clinton Administration's response to same.

9) An entity variously styled as the Business Council for Sustainable Energy, Business Council for a Sustainable Energy Future, and/or Business Council for a Sustainable Environment, including any manifestation of a group similarly styled though its name begins with "European...". This coalition(s) in which Enron played a determinative role addressed the lobbying/policy desires of industry participants such as Enron and documents referencing them are relevant for the Clinton Administration's response to same.

10) The Pew Center on Global Climate Change, Eileen Claussen of Pew and/or Pew's Business Environmental Leadership Council. This coalition addressed the lobbying/ policy desires of industry participants such as Enron and documents referencing them are relevant for the Clinton Administration's response to same.

11) An entity styled as the President's Council of Advisors on Science and Technology, or "PCAST". This Council addressed the lobbying/policy desires of industry participants such as Enron and documents referencing them are relevant for the Clinton Administration's response to same.

12) Referencing (now former) Enron employee John Palmisano. This individual was tasked with impacting Enron's lobbying/policy desires and documents referencing him are relevant for the Clinton Administration's response to same.

13) Referencing any and all meetings, correspondence and/or discussions between Enron employees John Palmisano and/or Mark Schroeder, and any of the following government officials: Dirk Forrester (DOE), Dan Reifsnyder (State Department), Howard Gruenspecht (DOE), T.J. Glauthier (OMB), Rafe Pomerance (State Department), David Doniger (EPA), David Gardiner (EPA), Rob Walcott (EPA), William White (EPA), Nancy Kete (EPA), Joe Kruger (EPA), Jane Leggett-Emil (EPA), and Lisa Carter (EPA). This request specifically but in no way solely requests information regarding specific discussions which we are aware occurred during the first two weeks of October, 1997, during which time the Clinton Administration finalized its position for upcoming international treaty negotiations in Kyoto, Japan. Internal Enron documents assert that senior Enron staff met with these and other individuals for the purpose of effecting Enron's lobbying/policy desires and documents referencing them are relevant for the Clinton Administration's response to same.

14) All other documents citing Enron, or its employees or officers Ken Lay, Terry Thorn, Cynthia Sandherr, Jeffrey Keeler and/or Steven Kean, and either "climate change", "Kyoto," or "global warming." These individuals were at one time or another involved in advocating Enron's lobbying/policy desires and documents referencing them are relevant for the Clinton Administration's response to same.

15) All documents citing the Competitive Enterprise Institute and/or the Cooler Heads Coalition of which CEI is a member, and either "climate change", "Kyoto," or "global warming." These entities were active in opposing Enron's lobbying/policy desires and documents referencing them are relevant for the Clinton Administration's response to same.

In anticipation of one possible agency response, please understand that any requests seeking documents referencing Enron and a particular governmental office are not the equivalent of submitting a FOIA to that particular office. Therefore, any possible objection that a particular office may not be subject to FOIA is not relevant.

Request for Fee Waiver

In order to help you determine our status for purposes of determining the applicability of fees, you should know that the Competitive Enterprise Institute is a non-profit, tax exempt organization and that this request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not for commercial use. CEI is routinely granted similar fee waiver requests by various federal agencies pursuant to FOIA. Therefore, I request a waiver of all fees. If this request is denied, I am willing to pay fees up to $100. If you estimate that the fees will exceed this limit, please inform me first.

Further Information Justifying Fee Waiver

1) Interest in Information/Use for Information/Income Issues

CEI's interest in the documents derives from its efforts to educate legislators and the public on the science and economics regarding regulatory policies generally, and environment and "global climate" policies specifically.

Neither CEI nor any foreseeable party will derive economic benefit from the requested material.

2) Public Benefit/Contribution to Public Understanding

The requested information relates to the operation of government, particularly regarding the controversial area of instituting policies restricting the availability or affordability of energy.

The public will benefit through the dissemination of the findings and works produced as a result of the information received. This includes both the general public and the numerous state legislatures and other public policy organizations with which CEI works, and CEI's own publications and opinion pieces which receive broad distribution.

A fairly widespread portion of the public at large, as opposed to a narrow spectrum of individuals, will receive this benefit, first through CEI, then through the U.S. Congress' and State legislatures' ongoing efforts to the extent their inquiries utilize the information.

3) Specialized Use

No "specialized use" of the documents is anticipated outside of that described herein.

4) Dissemination of Information

CEI publish that upon which they work via print and electronic media, as well as newsletters to legislators, media and other interested parties. Those activities are in fulfillment of CEI's mission.

The information received will be disseminated through a) membership newsletters, b) opinion pieces published in national and local newspapers and magazines, c) in-house publications for dissemination, and d) to the extent Congress or States pursuing environmental education legislation find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the Federal and State Governments on the relevant issues.

I look forward to your responses.

Sincerely,

Christopher C. Horner

Department of Energy
Washington, DC 20585

May 1, 2002

Christopher Horner
Competitive Enterprise Institute
1001 Connecticut Avenue, NW
Suite 1250
Washington, DC 20036

F2002-00236

Re: Documents relating to and/or citing Enron and it's lobbying of and influence upon the Clinton-Gore administration.

Dear Mr. Horner:

Thank you for the request for information that you made to the Department of Energy under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Your letter was received in this office today, and has been assigned a controlled number, F2002-00236. Since we receive several hundred requests a year, please use this number in any correspondence with the Department concerning your request.

We are reviewing your letter to determine if it addresses all of the criteria of a proper request under the FOIA and the Department's regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004. We will send you a subsequent letter informing you if we need additional information or stating where the request has been assigned to conduct a search for responsive documents.

I appreciate the opportunity to assist you with this matter. If you have any questions about this letter, please contact this office on (202) 586-6025.

Sincerely,

Abel Lopez

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat

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Department of Energy
Washington, DC 20585

May 6, 2002

Mr. Christopher C. Horner
Competitive Enterprise Institute
1001 Connecticut Avenue, N.W.
Washington, D. C. 20036

Re: F2002-00236

Dear Mr. Horner:

This is an interim response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for information about the influence of the Enron Corporation on the Clinton Administration on matters of global warning, "climate change," or the "Kyoto Protocol."

The request has been assigned to the Office of the Executive Secretariat and the Office of Policy and International Affairs to conduct a search of their respective files. These offices are considered the offices in the Department most likely to have documents responsive to the request. Upon the completion of the searches and the review of any responsive documents that may be found, we will provide you a response.

You state in your letter that you agree to pay up to $100 for fees incurred to process the request. You also asked to be notified if fees are expected to exceed this amount. For purposes of assessment of fees, you have been categorized under the DOE regulation implementing the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9 (b)(4), as an "other" requester. In this category, you are entitled to two free hours of search time and 100 free pages.

You also have requested a waiver of any fees incurred to process the request. The FOIA, however, provides that "[d]ocuments shall be furnished without any charge or a reduced charge below the fees established under clause (ii) if disclosure of the information is in the public interest it is likely to contribute significantly to public understanding of the operation or activities of the government and is not primarily in the commercial interest of the request." See 5 U.S.C. 552 (a)(4)(A)(iii).

The DOE has implemented this statutory standard for fee waivers or reduced fees in its regulation at 10 CFR 1004.9(a). The regulation sets forth the following pertinent factors that are considered by the agency in applying the criteria:

(1) The subject of the request: Whether the subject of the requested records concern "the operations or activities of the government."

(2) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute" to an understanding of government operations or activities;

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(3) The contribution to an understanding by the general public of the subject likely to result from disclosure;

(4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

If you would like your request for a fee waiver to be considered, please submit additional information to Ms. Sheila Jeter of my staff that addresses these factors. Your submission should be received by May 20, 2002. If we do not receive the additional information by this date, we will consider your statement to pay up to $100.00 for costs incurred as your assurance to pay fees associated with this request.

The above referenced number has been assigned to your request and you should refer to it in any correspondence to the Department. If you have any questions about the processing of your request, you may contact Ms. Jeter on (202) 586-5061.

I appreciate the opportunity to assist you, and thank you for your interest in the Department.

Sincerely,

Abel Lopez, Director
FOIA/Privacy Act Division
Office of the Executive Secretariat